Supreme Court, U.S.
FILED
JUN - 1 2015
OFFICE OF THE CLERK

No. 14-361

In the
Supreme Court of the United States

SAMUEL OCASIO,

PETITIONER,

v.

UNITED STATES OF AMERICA,

RESPONDENT.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

JOINT APPENDIX

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June 1, 2015

Petition for Writ of Certiorari filed September 25, 2014
Petition for Writ of Certiorari Granted March 2, 2015

TABLE OF CONTENTS

Relevant Docket Entries,
United States District Court
for the District of Maryland,
No. 1:11-cr-122-CCB ..... JA 1

Relevant Docket Entries,
United States Court of Appeals
for the Fourth Circuit, No. 12-4462 ..... JA 18

Indictment,
(D. Md. Mar. 9, 2011) ..... JA 24

Superseding Indictment,
(D. Md. Oct. 19, 2011) ..... JA 33

Motions Hearing Transcript,
(D. Md. Jan. 13, 2012) (excerpts) ..... JA 44

Defendant's Proposed Jury Instructions,
(Feb. 5, 2012) (excerpts) ..... JA 48

Government's Motion *in Limine*,
(D. Md. Feb. 10, 2012) ..... JA 57

Jury Trial Day 1 Transcript,
(D. Md. Feb. 13, 2012) (excerpts) ..... JA 63

Jury Trial Day 2 Transcript,
(D. Md. Feb. 14, 2012) (excerpts) ..... JA 72

Jury Trial Day 3 Transcript,
(D. Md. Feb. 15, 2012) (excerpts) ..... JA 125

Jury Trial Day 4 Transcript,
(D. Md. Feb. 21, 2012) (excerpts) ..... JA 142

Jury Trial Day 5 Transcript,
(D. Md. Feb. 22, 2012) (excerpts) ..... JA 166

Jury Trial Day 6 Transcript,
(D. Md. Feb. 23, 2012) (excerpts) ..... JA 180

Jury Instructions,
(D. Md. Feb. 24, 2012) ..... JA 199

Jury Verdict,
(D. Md. Feb. 24, 2012) ..... JA 230

Transcript of Sentencing Hearing,
(D. Md. June 1, 2012) ..... JA 232

The following opinions, decisions, judgments, and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the Petition for Certiorari:

Appendix A

Opinion of the United States Court of Appeals for the Fourth Circuit (Apr. 29, 2014) App-1

Appendix B

Oral Ruling Denying Defendant's Proposed Jury Instructions, Excerpts of Proceedings, No. 1:11-cr-122-CCB (D. Md. Feb. 23, 2012) App-30

Appendix C

Oral Ruling Regarding Restitution, Excerpts of Proceedings, No. 1:11-cr-122-CCB (D. Md. June 1, 2012) App-32

Appendix D

Oral Ruling Denying Motion for Judgment of Acquittal, Excerpts of Proceedings, No. 1:11-cr-122-CCB (D. Md. Feb. 22, 2012) App-38

Appendix E

Oral Ruling Denying Renewed Motion for Judgment of Acquittal, Excerpts of Proceedings, No. 1:11-cr-122-CCB (D. Md. Feb. 23, 2012) App-43

Appendix F

Order Denying Rehearing En Banc of the United States Court of Appeals for the Fourth Circuit (May 28, 2014) App-45

Appendix G

Judgment in a Criminal Case, No. 1:11-cr-122-CCB (D. Md. June 6, 2012) App-46

Appendix H

Amended Judgment in a Criminal Case, No. 1:11-cr-122-CCB (D. Md. July 2, 2014) App-51

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

RELEVANT DOCKET ENTRIES

UNITED STATES OF AMERICA,

Plaintiff,

v.

SAMUEL OCASIO, ET AL.,

Defendants.

No. 1:11-cr-122-CCB

Judge Catherine C. Blake

Date Filed	#	Docket Text
		* * *
02/23/2011	41	Initial Appearance as to Samuel Ocasio (Defendant informed of Rights.) held on 2/23/2011 before Magistrate Judge Paul W. Grimm. (FTR Gold) (std, Deputy Clerk) [1:11-mj-00662-PWG] Modified on 3/10/2011 (bmh, Deputy Clerk). (Entered: 02/25/2011)
		* * *

3/9/2011	75	INDICTMENT as to Hernan Alexis Moreno Mejia (1) count(s) 1, Edwin Javier Mejia (2) count(s) 1, Eddy Arias (3) count(s) 1, Rodney Cintron (5) count(s) 1, Jhonn S Corona (6) count(s) 1, Michael Lee Cross (7) count(s) 1, Jerry Edward Diggs, Jr (8) count(s) 1, Rafael Concepcion Feliciano, Jr (9) count(s) 1, Samuel Ocasio (13) count(s) 1, Leonel Rodriguez Torres (16) count(s) 1, Marcos Fernando Urena (17) count(s) 1, Henry Yambo (19) count (s) 1. (bmh, Deputy Clerk) (Entered: 03/10/2011)
		* * *
3/25/2011	110	Initial Appearance as to Samuel Ocasio (Defendant informed of Rights.) held on 3/25/2011 before Magistrate Judge Susan K. Gauvey. (FTR Gold: Goldsmith) (hsg, Deputy Clerk) (Entered: 03/25/2011)
3/25/2011	111	Arraignment as to Samuel Ocasio (13) Count 1 held on 3/25/2011, Plea entered by Samuel Ocasio Not Guilty on count 1 before Magistrate Judge Susan K. Gauvey. (FTR Gold: Goldsmith) (hsg, Deputy Clerk) (Entered: 03/25/2011)

* * *		
5/27/201	123	MOTION for Speedy Trial Status by USA as to Hernan Alexis Moreno Mejia, Edwin Javier Mejia, Eddy Arias, Rodney Cintron, Jhonn S Corona, Michael Lee Cross, Jerry Edward Diggs, Jr, Rafael Concepcion Feliciano, Jr, Samuel Ocasio, Leonel Rodriguez Torres, Marcos Fernando Urena, Henry Yambo. Responses due by 6/13/2011 (Attachments: # 1 Text of Proposed Order) (Gavin, Kathleen) (Entered: 05/27/2011)
6/07/2011	124	ORDER granting 123 Motion for Speedy Trial as to Hernan Alexis Moreno Mejia (1), Edwin Javier Mejia (2), Eddy Arias (3), Rodney Cintron (5), Jhonn S Corona (6), Michael Lee Cross (7), Jerry Edward Diggs Jr. (8), Rafael Concepcion Feliciano Jr. (9), Samuel Ocasio (13), Leonel Rodriguez Torres (16), Marcos Fernando Urena (17), Henry Yambo (19). Signed by Judge Catherine C. Blake on 6/7/11. (bmh, Deputy Clerk) (Entered: 06/09/2011)
* * *		

7/29/2011	130	MOTION to Sever Defendant, MOTION for Bill of Particulars, MOTION for Disclosure of and access to informants, MOTION to Produce coconspirator statements, MOTION for Miscellaneous Relief including access to pretrial services and probation reports; restrictions on use of plea and cooperation bargains; preservation of law enforcement notes; individual and attorney voir dire; additional peremptory challenges; adoption of codefendants' motions; and leave to file additional motions, MOTION to Suppress direct and derivative wiretap evidence by Samuel Ocasio as to Hernan Alexis Moreno Mejia, Edwin Javier Mejia, Eddy Arias, Rodney Cintron, Jhonn S Corona, Michael Lee Cross, Jerry Edward Diggs, Jr, Rafael Concepcion Feliciano, Jr, Samuel Ocasio, Leonel Rodriguez Torres, Marcos Fernando Urena, Henry Yambo. Responses due by 8/15/2011 (Attachments: # 1 Exhibit A Newspaper articles) (Crowe, Thomas) (Entered: 07/29/2011)
		* * *

10/19/2011	138	Superseding INDICTMENT as to Samuel Ocasio (13) count(s) 1s, 5s-7s, Kelvin Quade Manrich (20) count(s) 1, 2-4. (c/s) (jnls, Deputy Clerk) (Entered: 10/20/2011)
* * *		
10/19/2011	140	Redlined Superseding Indictment filed by USA on 10/19/2011 as to Samuel Ocasio, Kelvin Quade Manrich. (jnls, Deputy Clerk) (Entered: 10/20/2011)
* * *		
10/28/2011	142	Initial Appearance as to Samuel Ocasio (Defendant informed of Rights.) held on 10/28/2011 before Magistrate Judge Susan K. Gauvey. (FTR Gold: Goldsmith) (hsg, Deputy Clerk) (Entered: 10/31/2011)
10/28/2011	143	Arraignment as to Samuel Ocasio (13) Counts 1s, 5s-7s held on 10/28/2011, Plea entered by Samuel Ocasio Not Guilty on counts 1s, 5s-7s before Magistrate Judge Susan K. Gauvey. (FTR Gold: Goldsmith) (hsg, Deputy Clerk) (Entered: 10/31/2011)
* * *		

12/15/2011	149	RESPONSE in Opposition by USA as to Samuel Ocasio re 130 MOTION to Sever Defendant MOTION for Bill of Particulars MOTION for Disclosure of and access to informants MOTION to Produce coconspirator statements MOTION for Miscellaneous Relief including access to pretrial services and probation reports; restrictions on use of plea and cooperation bargains; preservation of law enforcement notes; individual and attorney voir dire; additional peremptory cha MOTION to Suppress direct and derivative wiretap evidence (Kelly, Tonya) (Entered: 12/15/2011)
		* * *
01/13/2012	156	Motion Hearing as to Samuel Ocasio held on 1/13/2012 re 130 MOTION to Sever Defendant MOTION to Suppress direct and derivative wiretap evidence filed by Samuel Ocasio before Judge Catherine C. Blake. (Court Reporter: Gail Simpkins) (kam, Deputy Clerk) (Entered: 01/13/2012)

01/13/2012	157	ORDER denying 130 Motion for severance; withdrawing 130 Motion for Bill of Particulars; withdrawing 130 Disclosure of confidential informant; withdrawing 130 Motion to Produce co-conspirator statement; withdrawing 130 Motion for adoption of co-defendant motions ; denying 130 Motion to Suppress wiretap evidence as to Samuel Ocasio (13). Signed by Judge Catherine C. Blake on 1/13/12. (jnls, Deputy Clerk) (Entered: 01/13/2012)
		* * *
02/01/2012	159	MOTION to Exclude Evidence Concerning Envoy Sensors and incorporated Memorandum of Law by Samuel Ocasio. Responses due by 2/21/2012 (Crowe, Thomas) (Entered: 02/01/2012)
02/05/2012	160	Proposed Jury Instructions by Samuel Ocasio (Crowe, Thomas) (Entered: 02/05/2012)

02/09/2012	161	-SEALED- Request for Rule 17 Subpoena by Samuel Ocasio (Attachments: # 1 Text of Proposed Order, # 2 Subpoena # 1, # 3 Subpoena # 2, # 4 Subpoena # 3, # 5 Subpoena # 4, # 6 Subpoena # 5) (Crowe, Thomas) (Entered: 02/09/2012)
* * *		
02/10/2012	163	MOTION in Limine by USA as to Samuel Ocasio. Responses due by 2/27/2012 (Attachments: # 1 Text of Proposed Order) (Gavin, Kathleen) (Entered: 02/10/2012)
02/10/2012	164	-SEALED- Order on Request for Rule 17 Subpoena as to Samuel Ocasio. Signed by Judge Catherine C. Blake on 2/10/12. (jnls, Deputy Clerk) (Entered: 02/10/2012)
02/10/2012	165	RESPONSE in Opposition by USA as to Samuel Ocasio re 159 MOTION to Exclude Evidence Concerning Envoy Sensors and incorporated Memorandum of Law (Kelly, Tonya) (Entered: 02/10/2012)

02/13/2012	166	-SEALED- Request for Rule 17 Subpoena by Samuel Ocasio (Attachments: # 1 Text of Proposed Order, # 2 Subpoena) (Crowe, Thomas) (Entered: 02/13/2012)
02/13/2012	167	Jury Trial Day 1 as to Samuel Ocasio, Kelvin Quade Manrich held on 2/13/2012 before Judge Catherine C. Blake. (Court Reporter: Gail Simpkins) (mdw, Deputy Clerk) (Entered: 02/14/2012)
02/14/2012	168	-SEALED- Order on 166 Request for Rule 17 Subpoena as to Samuel Ocasio. Signed by Judge Catherine C. Blake on 2/14/12. (mps, Deputy Clerk) (Entered: 02/14/2012)
02/14/2012	169	Jury Trial Day 2 as to Samuel Ocasio, Kelvin Quade Manrich held on 2/14/2012 before Judge Catherine C. Blake. (Court Reporter: Gail Simpkins) (mdw, Deputy Clerk) (Entered: 02/15/2012)

02/15/2012	170	Jury Trial Day 3 as to Samuel Ocasio, Kelvin Quade Manrich held on 2/15/2012 before Judge Catherine C. Blake. (Court Reporter: Gail Simpkins) (mdw, Deputy Clerk) (Entered: 02/16/2012)
02/21/2012	171	Jury Trial Day 4 as to Samuel Ocasio, Kelvin Quade Manrich held on 2/21/2012 before Judge Catherine C. Blake. (Court Reporter: Gail Simpkins) (mdw, Deputy Clerk) (Entered: 02/22/2012)
02/22/2012	172	Jury Trial Day 5 as to Samuel Ocasio, Kelvin Quade Manrich held on 2/22/2012 before Judge Catherine C. Blake. (Court Reporter: Gail Simpkins) (mdw, Deputy Clerk) (Entered: 02/22/2012)
* * *		
02/23/2012	175	Jury Trial Day 6 as to Samuel Ocasio held on 2/23/2012 before Judge Catherine C. Blake. (Court Reporter: Gail Simpkins) (mdw, Deputy Clerk) (Entered: 02/24/2012)

02/24/2012	176	WITNESS LIST by USA as to Kelvin Manrich and Samuel Ocasio (jnls, Deputy Clerk) Modified on 2/24/2012 (jnls, Deputy Clerk). (Entered: 02/24/2012)
02/24/2012	177	WITNESS LIST by Samuel Ocasio (jnls, Deputy Clerk) (Entered: 02/24/2012)
02/24/2012	178	EXHIBIT LIST by USA as to Samuel Ocasio, Kelvin Quade Manrich (jnls, Deputy Clerk) (Entered: 02/24/2012)
02/24/2012	179	EXHIBIT LIST by Samuel Ocasio (jnls, Deputy Clerk) (Entered: 02/24/2012)
02/24/2012	180	COURT'S EXHIBIT LIST as to Samuel Ocasio (jnls, Deputy Clerk) (Entered: 02/24/2012)
02/24/2012	181	Stipulation re: Certification of Exhibits Submitted to the Jury (jnls, Deputy Clerk) (Entered: 02/24/2012)
02/24/2012	182	Jury Instructions as to Samuel Ocasio (jnls, Deputy Clerk) (Entered: 02/24/2012)
02/24/2012	183	Stipulation re: Return of Exhibits to Counsel (jnls, Deputy Clerk) (Entered: 02/24/2012)

02/24/2012	184	JURY VERDICT as to Samuel Ocasio (13) Guilty on Count 1s,5s-7s. (jnls, Deputy Clerk) (Entered: 02/24/2012)
02/24/2012	185	JURY VERDICT Signed (jnls, Deputy Clerk) (Entered: 02/24/2012)
02/24/2012	186	Regular Sentencing Order as to Samuel Ocasio. Signed by Judge Catherine C. Blake on 2/23/12. (jnls, Deputy Clerk) (Entered: 02/24/2012)
		* * *
05/18/2012	203	SENTENCING MEMORANDUM by Samuel Ocasio (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit) (Crowe, Thomas) (Entered: 05/18/2012)
05/25/2012	204	Correspondence re: Restitution (Kelly, Tonya) (Entered: 05/25/2012)
06/01/2012	206	Sentencing as to Samuel Ocasio held on 6/1/2012 before Judge Catherine C. Blake. (Court Reporter: Martin Giordano) (kam, Deputy Clerk) (Entered: 06/01/2012)

06/07/2012	207	ORDER confirming results of conference call as to Samuel Ocasio. Signed by Judge Catherine C. Blake on 6/6/12. (mps, Deputy Clerk) (Entered: 06/07/2012)
06/06/2012	208	JUDGMENT as to Samuel Ocasio (13), Count(s) 1, DISMISSED; Count(s) 1s, 5s-7s, IMPRISONMENT for a total term of 18 months to run concurrent with each other; SUPERVISED RELEASE for a term of 3 years to run concurrent to each other; RESTITUTION in the amount of $1,500.00; ASSESSMENT of $400.00. Signed by Judge Catherine C. Blake on 6/5/12 (c/m 6/7/12 cags, Deputy Clerk) (Entered: 06/07/2012)
		* * *
06/14/2012	210	NOTICE OF APPEAL by Samuel Ocasio re 208 Judgment, Fee Status: CJA. (Crowe, Thomas) (Entered: 06/14/2012)
06/15/2012	211	MOTION for Hearing on Restitution by USA as to Samuel Ocasio. Responses due by 7/2/2012 (Attachments: # 1 Exhibit One) (Kelly, Tonya) (Entered: 06/15/2012)

06/15/2012	212	Transmission of Notice of Appeal and Docket Sheet as to Samuel Ocasio to US Court of Appeals re 210 Notice of Appeal Final Judgment. (sls, Deputy Clerk) (Entered: 06/15/2012)
06/18/2012	213	USCA Case Number 12-4462 as to Samuel Ocasio for 210 Notice of Appeal Final Judgment filed by Samuel Ocasio Case Manager Cathy Tyree. (sls, Deputy Clerk) (Entered: 06/18/2012)
* * *		
06/29/2012	217	RESPONSE in Opposition by Samuel Ocasio re 211 MOTION for Hearing on Restitution (Crowe, Thomas) (Entered: 06/29/2012)
* * *		
07/23/2012	224	Motion Hearing as to Samuel Ocasio held on 7/23/2012 re 211 MOTION for Hearing on Restitution filed by USA before Judge Catherine C. Blake. (Court Reporter: Gail Simpkins) (kam, Deputy Clerk) (Entered: 07/23/2012)
07/23/2012	225	EXHIBIT LIST by USA as to Samuel Ocasio (jnls, Deputy Clerk) (Entered: 07/23/2012)

07/23/2012	226	EXHIBIT LIST by Samuel Ocasio (jnls, Deputy Clerk) (Entered: 07/23/2012)
07/23/2012	227	Stipulation re: Return of Exhibits to Counsel (jnls, Deputy Clerk) (Entered: 07/23/2012)
07/23/2012	228	AMENDED JUDGMENT as to Samuel Ocasio (13), Count(s) 1, DISMISSED; Count(s) 1s, 5s-7s, IMPRISONMENT for a total term of 18 months as to Counts 1s, 5s, 6s & 7s to run concurrent to each other; SUPERVISED RELEASE for a term of 3 years as to Counts 1s, 5s, 6s & 7s to run concurrent to each other; RESTITUTION in the amount of $3370.58; ASSESSMENT of $400.00. Signed by Judge Catherine C. Blake on 7/23/12. (c/m 7/24/12 jnls, Deputy Clerk) (Entered: 07/24/2012)
* * *		
07/26/2012	230	NOTICE OF APPEAL by Samuel Ocasio re 228 Amended Judgment, Fee Status: CJA. (Crowe, Thomas) (Entered: 07/26/2012)

07/30/2012	231	Transmission of Notice of Appeal and Docket Sheet as to Samuel Ocasio to US Court of Appeals re 230 Notice of Appeal Final Judgment. (bf2, Deputy Clerk) (Entered: 07/30/2012)
07/30/2012	232	MOTION for Extension of Time to Surrender by Samuel Ocasio. Responses due by 8/16/2012 (Attachments: # 1 Text of Proposed Order) (Crowe, Thomas) (Entered: 07/30/2012)
		* * *
07/30/2012	234	SURRENDER ORDER as to Samuel Ocasio. Signed by Judge Catherine C. Blake on 7/30/12. (jnls, Deputy Clerk) (Entered: 07/31/2012)
		* * *
04/29/2014	294	JUDGMENT of USCA (certified copy) "AFFIRMING" in part; "VACATING" in part the judgment of the District Court and "REMANDING" to the District Court for further proceedings consistent with the court's decision as to Samuel Ocasio re 210 Notice of Appeal Final Judgment. (sls, Deputy Clerk) (Entered: 04/29/2014)

05/14/2014	295	STAY OF MANDATE of USCA (certified copy) as to Samuel Ocasio re 210 Notice of Appeal Final Judgment. (sls, Deputy Clerk) (Entered: 05/14/2014)
05/28/2014	296	ORDER of USCA (certified copy) "DENYING" petition for rehearing en banc as to Samuel Ocasio re 210 Notice of Appeal Final Judgment. (sls, Deputy Clerk) (Entered: 05/28/2014)
06/05/2014	297	MANDATE of USCA (certified copy) as to Samuel Ocasio re 210 Notice of Appeal Final Judgment. (sls, Deputy Clerk) (Entered: 06/05/2014)
07/02/2014	298	AMENDED JUDGMENT as to Samuel Ocasio (13), Count(s) 1, DISMISSED; Count(s) 1s, 5s-7s, IMPRISONMENT for a total term of 18 months as to Counts 1s, 5s, 6s & 7s to run concurrent to each other; SUPERVISED RELEASE for a term of 3 years as to Counts 1s, 5s, 6s & 7s to run concurrent to each other; ASSESSMENT of $400.00; RESTITUTION in the amount of $1,500.00. Signed by Judge Catherine C. Blake on 07/01/2014. (bas, Deputy Clerk) (Entered: 07/02/2014)
* * * *		

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RELEVANT DOCKET ENTRIES

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SAMUEL OCASIO,

Defendant Appellant.

No. 14-4462

Date Filed	#	Docket Text
06/18/2012	1	Criminal case docketed. Originating case number: 1:11-cr-00122-CCB-13. Date notice of appeal filed: 04/14/2012. Case manager: CTyree. [12-4462] (CT)
* * *		
06/18/2012	4	DOCKETING NOTICE issued Re: [1] case docketed Initial forms due within 14 days. Originating case number: 1:11-cr-00122-CCB-13. [12-4462] (CT)
* * *		

6/19/2012	8	ASSEMBLED ELECTRONIC RECORD docketed. Originating case number: 1:11-cr-00122-CCB-13. Record in folder? Yes. Record reviewed? Yes. [12-4462] (CT)
* * *		
07/10/2012	13	DOCKETING STATEMENT by Appellant Samuel Ocasio.
* * *		
01/07/2013	40	MOTION by Appellant Samuel Ocasio to extend filing time for opening brief and appendix until March 18, 2013.
01/08/2013	41	ORDER filed [999017322] granting Motion to extend filing time [40], updating briefing order deadlines. Opening brief and appendix due 03/18/2013. Response brief due 04/15/2013. Copies to all parties. [12-4462] (CT)
03/11/2013	42	MOTION by Appellant Samuel Ocasio to exceed length limitations for appendix.
03/11/2013	43	ORDER filed [999060850] granting Motion to exceed length limitations [42] Copies to all parties. [12-4462] (CT)
* * *		

03/18/2013	45	BRIEF by Appellant Samuel Ocasio in electronic and paper format. Type of Brief: Opening.
03/18/2013	46	FULL ELECTRONIC APPENDIX and full paper appendix by Appellant Samuel Ocasio.
03/18/2013	48	CERTIFICATE OF CONFIDENTIALITY (Local Rule 25(c)) by Samuel Ocasio.
		* * *
03/29/2013	50	MOTION by Appellee US to extend filing time for response brief until May 15, 2013.
03/29/2013	51	ORDER filed [999075874] granting Motion to extend filing time [50], updating/resuming briefing order deadlines. Response brief due 05/15/2013 Copies to all parties. [12-4462] (DSD)
03/18/2013	52	OPENING BRIEF (PAPER) file-stamped, on behalf of Samuel Ocasio. Number of pages: 63. Sufficient: YES. Entered on Docket Date: 04/03/2013. [999079198] [12-4462] (CB)
		* * *
04/03/2013		Appendix [46] released to public. [12-4462] (CB)
		* * *

04/03/2013	54	ORDER filed [999079211] sealing Volume Four of the Joint Appendix. Copies to all parties. [12-4462] (CB)
	* * *	
05/15/2013	57	RESPONSE BRIEF (PAPER) file-stamped, on behalf of US.
05/28/2013	58	BRIEF by Appellant Samuel Ocasio in electronic and paper format. Type of Brief: Reply. . . .
05/28/2013	59	REPLY BRIEF (PAPER) file-stamped, on behalf of Samuel Ocasio. Number of pages: [38]. Sufficient: YES. Entered on Docket Date: 05/30/2013.
	* * *	
10/18/2013	68	CASE CALENDARED for oral argument. Date: 12/11/2013.
	* * *	
12/05/2013	75	COURT ORDER filed [999253773] granting Motion to file corrected document [71] Description of corrected document: response brief. Copies to all parties.

12/11/2013	76	ORAL ARGUMENT heard before the Honorable Diana Gribbon Motz, Robert B. King and Dennis W. Shedd. Attorneys arguing case: Attorney Mr. Matthew Scott Owen for Appellant Samuel Ocasio. Courtroom Deputy: Jackie Quella.
		* * *
04/29/2014	78	PUBLISHED AUTHORED OPINION filed.
04/29/2014	79	JUDGMENT ORDER filed. Disposition method: 12-4462 opn.p.arg. Decision: Affirmed in part, vacated in part, and remanded.
04/29/2014	80	Copy of judgment and certiorari status form transmitted to defendant and counsel. [79] Judgment Order, [78] Published Authored Opinion. Copy mailed to defendant? No. Address of Defendant: Current address unavailable to court. Counsel to locate defen[d]ant and serve with judgment.
05/13/2014	81	PETITION for rehearing en banc (FRAP 35) by Appellant Samuel Ocasio.
05/14/2014	82	Mandate stayed by FRAP 41(d)(1). [12-4462] (CT)

05/28/2014	83	COURT ORDER filed [999364126] denying Motion for rehearing en banc [81] Copies to all parties. [12-4462] (CT)
06/05/2014	84	Mandate issued. Referencing: [79] Judgment Order, [78] Published Authored Opinion.
07/02/2014	85	Certiorari status form issued to Appellant Samuel Ocasio after denial of rehearing. Certiorari Status Form due 09/02/2014 for Samuel Ocasio. [12-4462] (LM)
07/16/2014	86	CERTIORARI STATUS FORM by Appellant Samuel Ocasio. [12-4462].
07/24/2014	87	SUPREME COURT REMARK extension granted to file petition for writ of certiorari. Petition for certiorari now due: September 25, 2014. [12-4462] (ABW)
* * *		
09/30/2014	90	SUPREME COURT REMARK petition for writ of certiorari filed. 09/25/2014. 14-361. [12-4462] (ABW)
03/02/2015	91	SUPREME COURT REMARK petition for writ of certiorari granted. 03/02/2015 [12-4462] (SJC)
* * * *		

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

v.

SAMUEL OCASIO, et al.

Defendants.

CRIMINAL No. CCB-11-0122

(Conspiracy; 18 U.S.C. § 371)

INDICTMENT

COUNT ONE

The Grand Jury for the District of Maryland charges that:

INTRODUCTION

Relevant Persons and Entities

At all times relevant to this Indictment:

1. **Hernan Alexis MORENO Mejia** was a resident of Rosedale, Maryland. MORENO was a co-owner of Majestic Auto Repair Shop LLC ("Majestic") located in Rosedale, Maryland.

2. **Edwin Javier MEJIA** was a resident of Middle River, Maryland. MEJIA was an employee of MAJESTIC.

3. Majestic was an automobile repair facility engaged in the business of providing both towing and automobile repair services, the activities of which affected interstate commerce.

4. **Eddy ARIAS** was a resident of Catonsville, Maryland and was employed as an active duty police officer with the Baltimore Police Department ("BPD"), assigned to patrol in the Southeastern District.

5. **Rodney CINTRON** was a resident of Middle River, Maryland and was employed as a police officer with the BPD, assigned to patrol in the Northeast District. On July 19, 2010, CINTRON was placed on disciplinary suspension.

6. **Jhonn S. CORONA** was a resident of Rosedale, Maryland and was employed as an active duty police officer with the BPD, assigned to patrol in the Eastern District.

7. **Michael Lee CROSS** was a resident of Reisterstown, Maryland and was employed as an active duty police officer with the BPD, assigned to patrol in the Northeast District.

8. **Jerry Edward DIGGS, Jr.** was a resident of Baltimore, Maryland and was employed as an active duty police officer with the BPD, assigned to patrol in the Northeast District.

9. **Rafael Concepcion FELICIANO, Jr.** was a resident of Baltimore, Maryland and was employed as an active duty police officer with the BPD, assigned to patrol in the Northeast District.

10. **Samuel OCASIO** was a resident of Edgewood, Maryland and was employed as an active duty police officer with the BPD, assigned to patrol in the Southern District.

11. **Leonel RODRIGUEZ** Torres was a resident of Edgewood, Maryland and was employed as an active duty police officer with the BPD, assigned to patrol in the Northeast District.

12. **Marcos Fernando URENA** was a resident of Baltimore, Maryland and was employed as an active duty police officer with the BPD, assigned to patrol in the Southwest District.

13. **Henry YAMBO** was a resident of Reisterstown, Maryland and was employed as an active duty police officer with the BPD, assigned to patrol in the Northeast District.

14. **"Medallion" tow companies** are towing companies that are under contract with the City of Baltimore to provide towing services at accident scenes for the BPD. Medallion tow companies receive a numbered medallion sticker that is issued by the Traffic Unit's Towing Office that they are required to affix to the left cowl of the towing vehicle(s). Majestic was not a medallion tow company.

Baltimore Police Department General Orders

15. The Police Commissioner of the BPD is authorized to pass General Orders that regulate BPD business. B[PD] officers are required to follow the General Orders in the course of their employment. BPD General Orders are communicated to BPD Officers through various means, including, but not limited to, departmental mail and e-mail.

16. BPD General Order C-2 (Rules and Regulations), published July 15, 2003, specifically provides that "no member of the Department shall

violate any Federal or State law, or City ordinance," (Rule 1, Section 18), and that "no compensation, reward, gift, or other consideration, shall be solicited or accepted by members without special permission of the Police Commissioner." (Rule 1, Section 30).

17. The stated purpose of BPD General Order 1-2 (Towing Procedures), published April 23, 2010, is to reaffirm the BPD's policies and procedures for the towing of civilian vehicles and is designed to safeguard the public interest against fraud, deception and similar abuses. BPD General Order 1-2, and the previous version of that Order, which had been published June 6, 1996, requires that when police request vehicle towing services, BPD Officers will only use medallion tow companies for police tows as authorized by the Communications Section. General Order 1-2 requires that when a BPD officer arrives at the scene of an accident, disability or emergency, the investigating officer at the scene shall promptly determine if a disabled vehicle needs to be towed from a city street. In all non-emergency situations, and in emergency situations prior to April 23, 2010, the officer shall permit the operator or owner of the car to contact a bona fide automobile or motor club of his or her choice, of which he or she is a member, an automobile insurance company with which he is insured, or a licensed towing vehicle. If the owner declines, is unable to do so, or the towing vehicle does not respond within twenty minutes, then the officer shall call, via the Communications Section, a medallion towing company.

THE CONSPIRACY

18. From in or about the Spring of 2008, and continuing through at least February 2011, the exact dates being unknown to the Grand Jury, in the District of Maryland and elsewhere,

Hernan Alexis MORENO Mejia
Edwin Javier MEJIA
Eddy ARIAS
Rodney CINTRON
Jhonn S. CORONA
Michael Lee CROSS
Jerry Edward DIGGS, Jr.
Rafael Concepcion FELICIANO Jr.
Samuel OCASIO
Leonel RODRIGUEZ Torres
Marcos Fernando URENA
and
Henry YAMBO

the defendants (herein collectively referred to as "the BPD Officers"), and others both known and unknown to the Grand Jury, did knowingly and unlawfully combine, conspire, confederate, and agree together and with each other to obstruct, delay, and affect commerce and the movement of any article and commodity in commerce by extortion, that is, to unlawfully obtain under color of official right, money and other property from MORENO, MEJIA, and Majestic, with their consent, not due the BPD Officers or their official position, in violation of Title 18, United States Code, Section 1951(a).

PURPOSE OF THE CONSPIRACY

19. It was a purpose of the conspiracy for MORENO and MEJIA to enrich the BPD Officers and to benefit MORENO and MEJIA by issuing payments to the BPD Officers in exchange for the BPD Officers' exercise of their official positions and influence to cause vehicles to be towed or otherwise delivered to Majestic for automobile services and repair.

THE MANNER AND MEANS OF THE CONSPIRACY

20. It was part of the conspiracy that MORENO and MEJIA paid the BPD Officers in exchange for the BPD Officers arranging for Majestic or a company used by Majestic, rather than a medallion company or some other towing company, to tow or otherwise obtain vehicles from accident scenes or other locations.

21. It was further part of the conspiracy that the BPD Officers agreed to use and did use their official positions and influence to cause vehicles to be delivered to Majestic pursuant to the following general pattern:

a. Shortly after the BPD dispatched the BPD Officer to an accident scene or a BPD Officer otherwise arrived at an accident or located a damaged vehicle, the BPD Officer contacted MORENO or the BPD Officer used the vehicle owner's cellular telephone to contact MORENO;

b. The BPD Officer provided MORENO with the relevant details about the potential vehicles

for MORENO, including the type and extent of the damage, whether the air bag deployed, the type of insurance on the car and the insurance carrier, whether the car was driveable, the location of the vehicle, and the contact information for the car's owner;

c. The BPD Officer informed the owner of the vehicle that Majestic could tow the car, provide auto repair services, help with the insurance claim, assist in getting a rental car, waive the deductible, and that the owner must not call their insurance company until after speaking with MORENO;

d. a Majestic truck, or a truck from another towing company used by Majestic, would arrive at the scene and tow the vehicle to Majestic, even if the vehicle was not actually disabled, or, in some instances, the vehicle was driven to Majestic by MORENO or the owner;

e. the BPD Officer falsely stated in his Maryland Motor Vehicle Accident Report, if one was prepared, that the vehicle owners arranged for their own tow or the BPD Officer intentionally left the box blank in the report as to towing or vehicle removal methods;

f. if the car stayed at Majestic, a claim was submitted to the insurance company for payment for towing, repairs allegedly made by Majestic, or both; and

g. MORENO or MEJIA and the BPD Officer later arranged to meet so that MORENO or MEJIA could pay the BPD Officer in cash or check

for steering the car owner to use Majestic for tow and automobile repair services.

OVERT ACTS

22. In furtherance of the conspiracy and to effect the purpose of the conspiracy, at least one of the conspirators performed and caused to be performed, at least one of the following overt acts on or about the dates set forth below, in the District of Maryland and elsewhere:

a. On or about January 25, 2010, MORENO and MEJIA issued a check, drawn on a Majestic business account and made payable to R. CINTRON, in the amount of $450.

b. On or about November 16,2010, DIGGS called MORENO at approximately 3:29 p.m. and told MORENO that he would have a 2005 Dodge Avenger for him the following day.

c. On or about November 25,2010, RODRIGUEZ called MORENO at approximately 10:51 p.m. and explained that he speaks to accident victims before writing an accident report in order to give MORENO time to get to the accident scene.

d. On or about December 8, 2010, FELICIANO sent a text message to MORENO at approximately 2:38 p.m. in which he stated "Hey bro, did everything go through with both cars cause I need some cash today? I'm tight with money and want to get some things before work later."

e. On or about December 16, 2010, at approximately 4:31 p.m., CORONA drove a

Trailblazer, which had been in an accident several hours earlier, onto the lot of Majestic.

f. On or about December 27,2010, URENA called MORENO and discussed when MORENO would pay URENA for sending cars to Majestic.

g. On or about January 23, 2011, ARIAS called MORENO at approximately 5:03 p.m. regarding a 1998 Toyota Four Runner that had been involved in a hit and run.

h. On or about January 31, 2011, CROSS called MORENO at approximately 9:49 a.m. regarding a vehicle that CROSS referred to MORENO.

i. On or about January 31, 2011, YAMBO called MORENO at approximately 5:01 p,m. and discussed a 2008 Toyota Camry that YAMBO was sending to Majestic from an accident scene.

18 U.S,C. § 371

/s/
Rod J. Rosenstein
United States Attorney

A TRUE BILL

[SIGNATURE REDACTED]
Foreperson

Date: March 9, 2011

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA	**CRIMINAL No. CCB-11-0122**
v.	
KELVIN QUADE MANRICH	
SAMUEL OCASIO	**(Conspiracy; 18 U.S.C. § 371; Extortion Under Color of Official Right, 18 U.S.C. § 1951(a), Aiding and Abetting, 18 U.S.C. § 2)**
Defendants.	

SUPERSEDING INDICTMENT

COUNT ONE

The Grand Jury for the District of Maryland charges that:

INTRODUCTION

Relevant Persons and Entities

At all times relevant to this Indictment:

1. Hernan Alexis Moreno Mejia was a resident of Rosedale, Maryland. Moreno was a co-owner of Majestic Auto Repair Shop LLC ("Majestic") located in Rosedale, Maryland.

2. Edwin Javier Mejia was a resident of Middle River, Maryland. Mejia was a co-owner of Majestic.

3. Majestic was an automobile repair facility engaged in the business of providing both towing and automobile repair services, the activities of which affected interstate commerce.

4. **Kelvin Quade MANRICH** was a resident of Middle River, Maryland and was employed as an active duty police officer with the Baltimore Police Department ("BPD"), assigned to patrol in the Northeast District.

5. **Samuel OCASIO** was a resident of Edgewood, Maryland and was employed as an active duty police officer with the BPD, assigned to patrol in the Southern District.

6. "Medallion" tow companies are towing companies that are under contract with the City of Baltimore to provide towing services at accident scenes for the BPD. Medallion tow companies receive a numbered medallion sticker that is issued by the BPD's Traffic Unit's Towing Office that they are required to affix to the left cowl of the towing vehicle(s). Majestic was not a medallion tow company.

Baltimore Police Department General Orders

7. The Police Commissioner of the BPD is authorized to pass General Orders that regulate BPD business. B[PD] officers are required to follow the General Orders in the course of their employment. BPD General Orders are communicated to BPD

Officers through various means, including, but not limited to, departmental mail and e-mail.

8. BPD General Order C-2 (Rules and Regulations), published July 15, 2003, specifically provides that "no member of the Department shall violate any Federal or State law, or City ordinance," (Rule 1, Section 18), and that "no compensation, reward, gift, or other consideration, shall be solicited or accepted by members without special permission of the Police Commissioner." (Rule 1, Section 30).

9. The stated purpose of BPD General Order I-2 (Towing Procedures), published April 23, 2010, is to reaffirm the BPD's policies and procedures for the towing of civilian vehicles and is designed to safeguard the public interest against fraud, deception and similar abuses. BPD General Order I-2, and the previous version of that Order, which had been published June 6, 1996, requires that when police request vehicle towing services, BPD Officers will only use medallion tow companies for police tows as authorized by the Communications Section. General Order I-2 requires that when a BPD officer arrives at the scene of an accident, disability or emergency, the investigating officer at the scene shall promptly determine if a disabled vehicle needs to be towed from a city street. In all non-emergency situations, and in emergency situations prior to April 23, 2010, the officer shall permit the operator or owner of the car to contact a bona fide automobile or motor club of his or her choice, of which he or she is a member, an automobile insurance company with which he is insured, or a licensed towing vehicle. If the owner declines, is unable to do so, or the towing vehicle does

not respond within twenty minutes, then the officer shall call, via the Communications Section, a medallion towing company.

THE CONSPIRACY

10. From in or about the Spring of 2008, and continuing through at least February 2011, the exact dates being unknown to the Grand Jury, in the District of Maryland and elsewhere,

Kelvin Quade MANRICH
Samuel OCASIO

the defendants, and others both known and unknown to the Grand Jury, did knowingly and unlawfully combine, conspire, confederate, and agree together, with other Baltimore Police Department Officers ("BPD Officers"), and with Moreno and Mejia to obstruct, delay, and affect commerce and the movement of any article and commodity in commerce by extortion, that is, to unlawfully obtain under color of official right, money and other property from Moreno, Mejia, and Majestic, with their consent, not due the defendants or their official position, in violation of Title 18, United States Code, Section 1951(a).

PURPOSE OF THE CONSPIRACY

11. It was a purpose of the conspiracy for Moreno and Mejia to enrich over 50 BPD Officers, including the defendants, and to benefit Moreno and Mejia by issuing payments to the BPD Officers in exchange for the BPD Officers' exercise of their official positions and influence to cause vehicles to be towed or

otherwise delivered to Majestic for automobile services and repair.

MANNER AND MEANS OF THE CONSPIRACY

12. It was part of the conspiracy that Moreno and Mejia paid the defendants and other BPD Officers in exchange for them arranging for Majestic or a company used by Majestic, rather than a medallion company or some other towing company, to tow or otherwise obtain vehicles from accident scenes or other locations.

13. It was further part of the conspiracy that the defendants and other BPD Officers agreed to use and did use their official positions and influence to cause vehicles to be delivered to Majestic pursuant to the following general pattern:

a. Shortly after the BPD dispatched a BPD Officer to an accident scene or a BPD Officer otherwise arrived at an accident or located a damaged vehicle, the BPD Officer contacted Moreno or used the vehicle owner's cellular telephone to contact Moreno;

b. The BPD Officer provided Moreno with the relevant details about the potential vehicles for Moreno, including the type and extent of the damage, whether the air bag deployed, the type of insurance on the car and the insurance carrier, whether the car was driveable, the location of the vehicle, and the contact information for the car's owner;

c. The BPD Officer informed the owner of the vehicle that Majestic could tow the car, provide auto repair services, help with the insurance claim,

assist in getting a rental car, waive the deductible, and that the owner must not call their insurance company until after speaking with Moreno or Mejia;

d. a Majestic truck, or a truck from another towing company used by Majestic, would arrive at the scene and tow the vehicle to Majestic, even if the vehicle was not actually disabled, or, in .some instances, the vehicle was driven to Majestic by Moreno, Mejia or the owner;

e. the BPD Officer falsely stated in his Maryland Motor Vehicle Accident Report, if one was prepared, that the vehicle owners arranged for their own tow or the BPD Officer intentionally left the box blank in the report as to towing or vehicle removal methods;

f. if the car stayed at Majestic, a claim was submitted to the insurance company for payment for towing, repairs allegedly made by Majestic, or both; and

g. Moreno or Mejia and the BPD Officer later arranged to meet so that Moreno or Mejia could pay the BPD Officer in cash or check for steering the car owner to use Majestic for tow and automobile repair services.

OVERT ACTS

14. In furtherance of the conspiracy and to effect the purpose of the conspiracy, at least one of the conspirators performed and caused to be performed, at least one of the following overt acts on or about the dates set forth below, in the District of Maryland and elsewhere:

a. On or about December 14, 2010, at approximately 5:52 p.m., **MANRICH** called Moreno and told Moreno that he and another BPD officer were going to split a payment from Moreno for a vehicle that **MANRICH** had sent to Majestic from a hit and run scene.

b. On or about January 15, 2011, **OCASIO** called Moreno, but the call went to voice mail. Moreno immediately called **OCASIO** back and during that call, **OCASIO** stated that he needed a tow truck at Russell Street in front of the Holiday Inn.

c–h. Counts Two through Seven are hereby incorporated as Overt Acts of the conspiracy.

18 U.S.C.§ 371

The Grand Jury further charges that:

COUNT TWO

1. Paragraphs 1 through 9 and 11 through 13 of Count One are incorporated and re-alleged here.

2. On or about December 24, 2010, in the District of Maryland and elsewhere, the defendant,

Kelvin Quade MANRICH

did knowingly and willfully obstruct, delay and affect interstate commerce and the movement of articles and commodities in interstate commerce by extortion, by unlawfully obtaining under color of official right, money and property from Hernan Alexis Moreno, with his consent, not due **MANRICH** as a Baltimore Police Officer or **MANRICH**'s official position.

18 U.S.C. § 1951(a)

18 U.S.C. § 2

The Grand Jury further charges that:

COUNT THREE

1. Paragraphs 1 through 9 and 11 through 13 are incorporated and re-alleged here.

2. On or about January 30, 2011, in the District of Maryland and elsewhere, the defendant,

Kelvin Quade MANRICH

did knowingly and willfully obstruct, delay and affect interstate commerce and the movement of articles and commodities in interstate commerce by extortion, by unlawfully obtaining under color of official right, money and property from Hernan Alexis Moreno, with his consent, not due **MANRICH** as a Baltimore Police Officer or **MANRICH**'s official position.

18 U.S.C. § 1951(a)

18 U.S.C. § 2

The Grand Jury further charges that:

COUNT FOUR

1. Paragraphs 1 through 9 and 11 through 13 are incorporated and re-alleged here.

2. On or about February 7, 2011, in the District of Maryland and elsewhere, the defendant,

Kelvin Quade MANRICH

did knowingly and willfully obstruct, delay and affect interstate commerce and the movement of articles and commodities in interstate commerce by extortion, by unlawfully obtaining under color of official right,

money and property from Hernan Alexis Moreno, with his consent, not due **MANRICH** as a Baltimore Police Officer or **MANRICH**'s official position.

18 U.S.C. § 1951(a)

18 U.S.C. § 2

The Grand Jury further charges that:

COUNT FIVE

1. Paragraphs 1 through 9 and 11 through 13 are incorporated and re-alleged here.

2. On or about January 17, 2010, in the District of Maryland and elsewhere, the defendant,

Samuel OCASIO

did knowingly and willfully obstruct, delay and affect interstate commerce and the movement of articles and commodities in interstate commerce by extortion, by unlawfully obtaining under color of official right, money and property from Hernan Alexis Moreno, with his consent, not due **OCASIO** as a Baltimore Police Officer or **OCASIO**'s official position.

18 U.S.C. § 1951(a)

18 U.S.C. § 2

The Grand Jury further charges that:

COUNT SIX

1. Paragraphs 1 through 9 and 11 through 13 are incorporated and re-alleged here.

2. On or about January 10, 2010, in the District of Maryland and elsewhere, the defendant,

Samuel OCASIO

did knowingly and willfully obstruct, delay and affect interstate commerce and the movement of articles and commodities in interstate commerce by extortion, by unlawfully obtaining under color of official right, money and property from Hernan Alexis Moreno, with his consent, not due **OCASIO** as a Baltimore Police Officer or **OCASIO**'s official position.

18 U.S.C. § 1951(a)

18 U.S.C. § 2

The Grand Jury further charges that:

COUNT SEVEN

1. Paragraphs 1 through 9 and 11 through 13 are incorporated and re-alleged here.

2. On or about January 15, 2011, in the District of Maryland and elsewhere, the defendant,

Samuel OCASIO

did knowingly and willfully obstruct, delay and affect interstate commerce and the movement of articles and commodities in interstate commerce by extortion, by unlawfully obtaining under color of official right, money and property from Hernan Alexis Moreno, with his consent, not due **OCASIO** as a Baltimore Police Officer or **OCASIO**'s official position.

18 U.S.C. § 1951(a)

18 U.S.C. § 2

/s/
Rod J. Rosenstein
United States Attorney

A TRUE BILL

[SIGNATURE REDACTED]
Foreperson

Date: October 19, 2011

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

v. **CRIMINAL No. CCB-11-0122**

SAMUEL OCASIO, et al.

Defendants.

MOTIONS HEARING

Before: The Honorable Catherine C. Blake
United States District Judge

Baltimore, Maryland

January 13, 2012

* * *

[3–6]

[MR. CROWE:]

Your Honor, as best as I am able to keep track of things, the motions that we have pending are the ones designated as number one in my omnibus motion for severance of trial from co-defendants, number four, the suppression of the wiretap evidence and derivative evidence, seven, restrictions on use of plea bargain.

Number eight is preservation of law enforcement notes. Nine is individual attorney voir dire. Ten is additional peremptory challenges, and 12 would be leave to file additional motions.

The only ones that I want to speak on today, unless, of course, the Court has questions, are

severance from trial of the co-defendants, on which I will be extraordinarily brief, and then the motion for suppression of all the wiretap evidence and evidence derivative of that.

In terms of the severance of trial of co-defendants, that was initially filed when there was a much larger cast of characters in this case. At present, Mr. Ocasio is only going to be going to trial against Mr. Manrich.

My understanding is that the case against Mr. Manrich is somewhat stronger than the case against Mr. Ocasio. We know from discovery that Mr. Manrich was apparently given a check by Alex Moreno, who is the owner of Majestic, and that that was witnessed by a civilian.

That is not the case with Mr. Ocasio. We believe that the government will have more instances of supposed improper payments to him than it does against Mr. Ocasio.

We also know that Mr. Manrich confessed at the time that he was arrested. That confession did not implicate my client. In fact, our information is that they don't know each other and had never even heard of each other until this case.

Then we also understand that he had given a proffer to the U.S. Attorney's Office.

But again, based on the disparity of evidence, and the fact that if the government gets on the stand and says that he confessed, the jury may wonder what Mr. Ocasio said when he was arrested, that we

do feel that we are entitled to a severance in that matter.

The wiretaps —

THE COURT: I'm sorry to interrupt, but why don't I hear from the government briefly on the severance, and then we will go to the wiretap.

MR. CROWE: Sure.

MS. KELLY: Thank you, Your Honor. I don't have much to add besides what's in our papers, except that there are no *Bruton* issues in this case, and there certainly are no irreconcilable defenses in this case.

While Mr. Crowe is accurate in that there are more incidents and more incidents of payments to Mr. Manrich than to Mr. Ocasio, I am not sure that the word stronger evidence is appropriate. More frequent perhaps, but what happened in the case is almost exactly the same for both defendants. There just happens to be more instances, and at trial we don't intend to put on evidence of every incident for either defendant.

So I'm not sure the disparity is even going to be as obvious to the jury. We are not going to go through 50 for Mr. Manrich and three for Mr. Ocasio. We are simply going to go through basically the substantive charges that are in the indictment, and then the witnesses will probably put flesh on that in terms of how often.

There are more calls for Mr. Manrich, but the government doesn't believe that there is case law to suggest just because one defendant was in more

contact with Mr. Moreno than the other, that that would be a basis for a severance.

Like I said, there are no *Bruton* issues, and I certainly have found no case law where one defendant confessed and the other didn't, that that's a basis for a severance.

THE COURT: Am I right in thinking that the number of your trial witnesses would overlap if we tried this —

MS. KELLY: Absolutely, Your Honor. Mr. Moreno and Mr. Mejia, the two co-owners of Majestic, would testify at both trials.

There is also another police officer who, while it may be true that they didn't know each other and talk outside of work, there is a common other police officer to both of them who both were aware was also referring cars and who both defendants were in constant communication with.

So there are at least three, maybe four witnesses that would testify at both trials, and that doesn't include a witness from Baltimore Police Department about the General Orders and some of those things that would absolutely go to both defendants.

The government submits — this is in our papers — except for the particulars of the substantive incidents for each defendant, the trial would look almost identical if they were separate.

THE COURT: Okay. Thank you.

* * * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

v. **CRIMINAL No. CCB-11-0122**

SAMUEL OCASIO, et al.

Defendants.

DEFENDANT OCASIO'S OBJECTIONS TO GOVERNMENT'S PROPOSED INSTRUCTIONS AND HIS REQUESTED INSTRUCTIONS

* * *

I.

DEFENDANT'S PRELIMINARY OBJECTIONS TO GOVERNMENT'S PROPOSED INSTRUCTIONS

Government Instruction 32 (Knowledge, Willfulness, Intent, Malice). The government requests Sand Instruction 7-16. The Supreme Court held in *Sandstrom v. Montana*, 442 U.S. 510 (1979) holding that a *presumption* that a person intends the ordinary consequences of his voluntary actions was impermissible, if it had so little as a "persuasion shifting effect." *Id.* at 519. While Government Instruction 32 is one step removed in that does not talk of a presumption (a distinction likely lost upon law jurors), its practical effect is to lower the government's burden of proof. Such an instruction is particularly inappropriate in the present case where the prosecution case will be quite direct.

Government Instruction 43 (Law Enforcement Witness). Defendant believes that his Requested Instruction 9 is superior to Sand Instruction 7-16, because it specifies that its admonition applies to all law enforcement witnesses, not just federal law enforcement witnesses.

Government Instruction 51 (Acts and Declarations of Co-Conspirators). While Government Instruction does recite Sand Instruction 19-9, Defendant submits that his Requested Instruction 11 is superior.

Government Instruction 57 (Third Element-Misuse of Official Position). Government Instruction 57 is Sand Instruction 50-22 dealing with the third element of a Hobbs Act extortion under color of official right. Defendant submits that his Requested Instruction 16 is superior because it recites the correct principle of law that one cannot use his official position to obtain an improper payment from one who is member of the conspiracy.

Government Instruction 58 (Wrongfully Obtained Consent of Giver). Government Instruction 58 recites Sand Instruction 50-23. Defendant's Requested Instruction 17 is a more accurate statement of the law because it fleshes out the alternative finding the jury can make, that is that the giver was making a payment for what he believed were legitimate services or services unrelated to the defendant's official position or misuse of that official position.

Government Instruction 59 (Fourth Element - Affecting Interstate Commerce). Government

Instruction 59 is a modification of Sand Instruction 50-24. Defendant's Requested Instruction 19 is Sand Instruction 50-24 without modification.

* * *

OCASIO'S REQUESTED INSTRUCTION 11

(Nature of Agreement; Mere Knowledge, Acquiescence, Association or Presence Insufficient to Prove Agreement)

Although a conspiratorial agreement may be inferred from circumstantial evidence, simple knowledge, approval or, or acquiescence in the object or purpose of a conspiracy, without an intention and agreement to accomplish the same, specific illegal objective is not sufficient to prove a conspiratorial agreement.

Because it is the agreement which is criminal in a conspiracy, the Government must prove what type of agreement existed as to the defendant and each person with whom it alleges he conspired. If there is no agreement or meeting of minds between conspirators as to the object, or essential nature of the illegal scheme or plan, there is no agreement. Any defendant who is not shown, beyond a reasonable doubt, to have agreed to the essential nature of the illegal scheme, must be acquitted of conspiracy.

The proof of a conspiracy fails if the purposes of two or more alleged conspirators are different, even though both intend to achieve an illegal goal.

See generally, Joseph S. McSorley, A Portable Guide to Federal Conspiracy Law, pp. 11 and 12

(ABA Criminal Justice Section, American Bar Ass'n) (1996).

As to first paragraph: *United States v. Zafiro*, 945 F.2d 881 (7th Cir. 1991), *aff'd*, 560 U.S. 534 (1993); *Brever v. Rockwell Int'l Corp.*, 40 F.3d 1119, 1127 (1994) (civil conspiracy case); *United States v. Perlaza*, 818 F.2d 1354 (7th Cir.), *cert. denied*, 484 U.S. 861 (1987).

As to the second paragraph: *Blumental v. United States*, 332 U.S. 539, 537 (1947) (government must prove agreement on "essential nature of the plan"); *Krulevitch v. United States*, 336 U.S. 440, 448 (1949) (concurring) (must be "meeting of minds" to convict of conspiracy). As to third paragraph: *United States v. Giunta*, 925 F.2d 758 (4th Cir. 1991).

* * *

OCASIO'S REQUESTED INSTRUCTION 14

(Multiple Conspiracies)

In this case, the defendants contend that the government's proof fails to show the existence of only one overall conspiracy. Rather, they claim that the evidence shows, at most that there were actually several separate and independent conspiracies with various groups of members.

Whether there existed a single unlawful agreement, or many such agreements, or indeed, no agreement at all, is a fact for you, the jury, to determine in accordance with the instructions I am about to give you.

When two or more people join together to further one common unlawful design or purpose, a single

conspiracy exists. By way of contrast, multiple conspiracies exist when there are separate unlawful agreements to achieve distinct purposes.

(*If applicable*: Proof of several separate and independent conspiracies is not proof of the single, overall conspiracy charged in the indictment, unless one of the conspiracies proved happens to be the single conspiracy described in the indictment.)

You may find that there was a single conspiracy despite the fact that there were changes in either personnel (*if applicable*: by the termination, withdrawal, additions of new members), or activities or both, so long as you find that some of the co-conspirators continued to act for the entire duration of the conspiracy for the purpose(s) charged in the indictment. The fact that the members or a conspiracy are not always identical does not necessarily imply that separate conspiracies exist.

On the other hand, if you find that the conspiracy charged in the indictment did not exist, you cannot find any defendant guilty of the single conspiracy charged in the indictment. This is so even if you find that some conspiracy other than the one charged in this indictment, even though the purposes of both conspiracies may have been the same and even though there may have been some overlap in membership.

Similarly, if you find that the particular defendant was a member of another conspiracy, and not the one charged in the indictment, then you must acquit the defendant of the conspiracy charged.

Therefore, what you must do is determine whether the conspiracy charged in the indictment existed. If it did, you then must determine the nature of the conspiracy and who were its members.

Sand Instruction 19-5

OCASIO'S REQUESTED INSTRUCTION 15

(Conspiracy - Intended Giver
Cannot be a Coconspirator)

In order to convict a defendant of conspiracy to commit extortion under color of official right, the government must prove beyond a reasonable doubt that the conspiracy was to obtain money or property from some person who was not a member of the conspiracy. Therefore if you find that the only person or persons from whom a defendant conspired to obtain money by extortion under color of official right was another person or other persons who were also members of the conspiracy, then you must find the defendant not guilty of the conspiracy.

To put the matter more precisely, if you determine that a defendant participated in a conspiracy to extort money under color of official right only from Alexis Moreno, Edwin Mejia and/or the company Majestic you must acquit the defendant. That is true even if the ultimate source of the money or property supposedly extorted from Moreno, Mejia or Majestic was a third party such as an insurance company for the owner of an automobile which had been involved in an accident or vandalized.

United States v. Brock, 501 F.3d 762, 767 (6th Cir. 2007) (Hobbs Act conspirators must have formed an

agreement "to obtain property *from someone outside the conspiracy*." (emphasis added)); 18 U.S.C. § 1951(b)(2) (Hobbs Act extortion defined as "the obtaining of property *of another*" (emphasis added)); *cf United States v. Medford*, __ F.3d __, Case No. 08-5030 (4th Cir., Nov. 7, 2011) (appellants' argument raised for first time on appeal that conviction of Hobbs Act conspiracy should be reversed because money was obtained from coconspirators rejected under plain error analysis because indictment did not charge that the "givers" were Hobbs Act conspirators); *but see United States v. Currie*, Crim. No. RDB-10-0352 (D. Md., Aug. 5, 2011).

OCASIO'S REQUESTED INSTRUCTION 16

(Substantive Count -Third Element-Misuse of Official Position)

The third element which the government must prove beyond a reasonable doubt to convict a defendant of the individual illegal payments charged in Counts 2 through 7 of the Superseding Indictment is that the defendant used the authority of his office or position to obtain the money, goods or services. That is, you must decide whether the defendant represented himself as capable of doing something, or of refusing to do something because of his official position.

To satisfy this element, the government must prove beyond a reasonable doubt the defendant obtained a payment from another. that is, from a person or entity that is not a coconspirator, to which he was not entitled, knowing that the payment was made in return for official acts rather than

voluntarily or unrelated to the defendant's office. The defendant need not have affirmatively induced the payments by his actions, but he must have known that the payment was offered in exchange for a specific exercise of his powers. You do not have to determine whether the defendant could or did actually perform the service, or whether he actually had a duty to do so.

Sand Instruction 50-22 (modified by addition of underscored language); *see United States v. Brock*, 501 F.3d 762, 767 (6th Cir. 2007), and authorities cited with respect to Defendant's Requested Instruction 15, immediately above.

OCASIO'S REQUESTED INSTRUCTION 17

(Wrongfully Obtained Consent of Giver)

If you decide that the defendant was given money, goods or services not due the office he represents, you must then decide whether the defendant used the authority of his office or position to obtain the money, goods or services. The focus of your inquiry is whether the money, goods or services were given to the defendant because of the defendant's misuse of his position. The government must prove beyond a reasonable doubt that these items were given to the defendant in connection with his power and authority as a public official. The giver may have initiated this exchange and the parties may have been on friendly terms. These are factors to consider in deciding whether the giver gave the payments because he believed the defendant would use his office for facts not properly related to his official duty, or whether, instead, the giver was

making a voluntary contribution, or instead the giver was making a payment for what the giver believed were legitimate services or services unrelated to the defendant's official position or misuse of that official position.

Unless you decide, beyond a reasonable doubt, that the defendant knew the giver's consent was wrongfully obtained—that is, that the money goods or services were given in connection with the defendant's misuse of his official position rather than being given voluntarily—you cannot convict the defendant.

Sand Instruction 50-23 (modified by inclusion of underscored language)

* * * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

v. **CRIMINAL No.**

SAMUEL OCASIO, et al. **CCB-11-0122**

Defendants.

GOVERNMENT'S MOTION IN LIMINE

The United States of America, by its undersigned attorneys, herein moves *in limine* for the entry of an Order precluding the defense from asserting or suggesting in any jury address that the government is required to prove that the defendants obtained money or property from a non-member of the charged conspiracy in order to prove the charges in this case. As grounds for this motion, the government states as follows:

INTRODUCTION

The defendants are charged in a Superseding Indictment with conspiracy in violation of 18 U.S.C. Section 371 and with substantive counts of Hobbs Act extortion under color of official right in violation of 18 U.S.C. Section 1951(a). The trial is scheduled to commence on Monday, February 13, 2012.

Earlier this week, defendant Ocasio submitted a number of proposed jury instructions. The government expects to make its objections to many of those proposed instructions at the time of the charge conference, in accordance with the standard practice in this Court. The defendant's Requested

Instructions 15 and 16, however, suggest that the defendant may assert a legally incorrect interpretation of the elements of conspiracy and the Hobbs Act as a defense at trial. Any such inaccurate assertion of the applicable legal standards would serve only to confuse and mislead the jury during trial. Accordingly, the government moves *in limine* to exclude argument in any jury address, including opening and closing statements, that the government must prove that the defendants conspired to obtain money from a person or persons who were not also members of the charged conspiracy.

ARGUMENT

Relying on a lone Sixth Circuit case that is at odds with both Supreme Court and Fourth Circuit precedent, defendant Ocasio proposes in his Requested Instructions 15 and 16 that this Court instruct the jury that it must find that the defendants obtained money or property from a person who was not a member of the charged conspiracy in order to convict the defendants for violating the Hobbs Act or for conspiring to do so. Those instructions misstate the law and should not be given to the jury nor should the defense be permitted to suggest to the jury that it must make any such finding in determining whether the government has met its burden of proof at trial.

The case upon which the defendant relies is *United States v. Brock*, 501 F.3d 762 (6th Cir. 2007). In that decision, the Sixth Circuit held that in order to be guilty of conspiracy to commit extortion under the Hobbs Act, the alleged conspirators must have formed an agreement to obtain property from an

individual or entity outside the Hobbs Act conspiracy. 501 F.3d 762, 767 (6th Cir. 2007). This decision is not controlling for several reasons.

First, as several other courts have already recognized in expressly refusing to follow *Brock*, the Sixth Circuit's ruling is inconsistent with the holding in *Evans v. United States*, 504 U.S. 255, 257 (1992). *See, e.g.*, *United States v. Kott*, 625 F Supp. 2d 854, 856-58 (D. Alaska 2007) (Court declined to follow Brock in case where conspiracy charged under Section 371 to commit extortion under color of official right and bribery involving Alaskan politicians on ground that Brock was inconsistent with Evans and "conflicts with precedent in at least four other circuits [including the Fourth Circuit]"). In *Evans*, the Supreme Court specifically ruled that "[i]n the case of the public official [t]he [Hobbs Act] statute merely requires of the public official that he obtain 'property from another, with his consent, under color of official right" and that "the Government need only show that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts." *Id.* at 265, 268. There simply is no requirement that the payor in the extortion scheme be a person outside of the charged conspiracy.

Notably, Judge Bennett recently rejected an identical argument based on the *Brock* decision in *United States v. Currie*, 2011 WL 3439942 (D. Md. Aug. 5, 2011). In *Currie*, as in the instant case, the defendants were charged with conspiracy to violate the Hobbs Act under 18 U.S.C. Section 371 and with a substantive Hobbs Act violation. Citing *Brock*, the

defendants moved to dismiss both the Hobbs Act count and the Section 371 conspiracy count on the ground that the indictment failed to allege that the extortionate payments were made by a non-member of the charged conspiracy. Judge Bennett found that the *Brock* decision is inconsistent with the Supreme Court's holding in *Evans* that public officials can conspire with bribe payors to extort property from payors when the payments are in return for official action. As a result, the Court denied the motion to dismiss, "reject[ing] Defendants' argument that a person cannot be found guilty of extortion, aiding and abetting extortion, or conspiracy to do the same, if the extorted party is named as a co-conspirator." *Id.* at *10.

Second, the Fourth Circuit has not adopted the *Brock* rationale, and the defendant's reliance on the recent decision in *United States v. Medford*, 661 F.3d 746 (4th Cir. 2011), is misplaced. In that case, the defendant apparently raised a similar *Brock* argument, but the Court never even reached the issue, finding instead that the defendant's legal argument "suffers from a false premise, namely that all the persons and entities from whom [the defendant] and his co-conspirators obtained property were parties to the conspiracy." *Id.* at 754.[1]

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[1] The defendant in *Medford* was charged with conspiracy to commit extortion pursuant to 18 U.S.C. § 1951, which is not the offense charged in this case. Likewise, the defendants in *Brock* were not charged with conspiracy pursuant to 18 U.S.C. § 371, nor were they charged with substantive Hobbs Act violations, as the defendants are charged here.

United States v. Spitler, 800 F.2d 1267 (1986), sets forth the current state of the law in the Fourth Circuit. That decision firmly establishes that there is no requirement that the government prove that money or property be obtained from a non-conspirator in order for there to be a substantive violation of the Hobbs Act or a conspiracy to commit such a violation under 18 U.S.C. Section 371. In *Spitler*, the Court affirmed a conviction for aiding and abetting and conspiracy to violate the Hobbs Act where the defendant worked for the company that was the victim of an extortion scheme. The government official in that case demanded payment from the defendant and his company in exchange for the awarding of government contracts. The defendant argued he was the victim of the Hobbs Act violations since his company had been "shaken down" by the public official and could not, therefore, be convicted for aiding and abetting the extortion or conspiring to commit it. The Fourth Circuit rejected that argument, holding that "[w]e affirm [the defendant's] conviction of aiding and abetting and conspiracy to commit extortion because [the defendant] cannot be deemed a mere extortion victim whose conduct, under the defendants' argument, Congress chose not to criminalize under the statutes proscribing aiding and abetting and conspiracy." *Id.* at 1275.

In short, defendant Ocasio's Requested Instructions 15 and 16 are legally incorrect. Defense counsel therefore should be precluded from suggesting or arguing to the jury that the government must show that the extortionate payments were made by a person outside of the charged conspiracy in order for it to meet its burden

of proof on the charged offenses. Any such argument or suggestion would only serve to confuse and mislead the jury.

CONCLUSION

For the foregoing reasons, the government respectfully requests that this honorable Court grant its Motion *in Limine*.

Respectfully submitted,

/s/

United States Attorney

* * * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

v. **CRIMINAL No. CCB-11-0122**

SAMUEL OCASIO, et al.

Defendants.

JURY TRIAL DAY 1

Before: The Honorable Catherine C. Blake
United States District Judge

Baltimore, Maryland

February 13, 2012

* * *

[17–22]

[MS. KELLY:]

But although they took that oath, and they agreed to be police officers, they accepted both the privilege and obligation of being a police officer, they both eventually succumb to greed, and they began using their position, that privilege of being Baltimore police officers, to enrich themselves by getting cash kickbacks, to convince accident victims to have their cars towed and repaired by Majestic Auto Body.

And when they did, they joined a growing body of police officers who were also doing the same, and that's all this trial is about.

My name is Tonya Kelly, and together with Ms. Gavin and Michelle Wicker of the United States

Attorney's Office, we are going to be presenting this case to you.

Also seated with us is Special Agent Rob Guynn and Detective Matthew Smith of the Baltimore Police Department.

We are here to provide you with all of the evidence that you need to find beyond a reasonable doubt that both Kelvin Manrich and Samuel Ocasio are guilty of conspiracy to commit extortion under color of official right, and for substantive counts of extortion under color of official right.

Now I warn you, do not be distracted by the word extortion. It doesn't mean in this case maybe what you brought in the door with you you think it means. Like Judge Blake just told you, all it means is unlawfully obtaining money under color of official right from Majestic.

It doesn't mean force. It doesn't mean against someone's will. Like Judge Blake said, it can be by consent, and in this case, Majestic absolutely consented.

They wanted nothing more than for Kelvin Manrich and Samuel Ocasio to be successful in getting cars to Majestic. Because what does that mean for them? More money. How is an auto repair shop going to make money? Get cars, fix them, bill insurance companies, and get more cars.

This kickback scheme was actually very, very simple. Majestic Auto Body is an auto repair shop that is located in Rosedale, Maryland. And for any of

you that aren't familiar with the city, it's literally steps from the city line.

The Northeast District of Baltimore City is just next to Majestic Auto Body in Rosedale, and Kelvin Manrich was assigned to the Northeast District. So every time Mr. Manrich got an accident, it was just minutes from Majestic Auto Body.

In approximately 2008, the evidence will show you that Alex Moreno and his brother, Edwin Mejia, were running Majestic Auto Body, and they wanted more cars, because more cars means money.

Alex Moreno met a Baltimore police officer named Jhonn Corona. Jhonn Corona started to take — strike that. Excuse me.

Alex Moreno started to pay cash kickbacks to Jhonn Corona to refer cars to him, and it was honestly so easy for everybody that Jhonn Corona told an officer, who told an officer, who told an officer, and told an officer, and eventually we stand here because these two officers were told and started to get kickbacks. That's how these two get here.

I'm going to tell you a little bit about the general pattern of the scheme. As I said, it's awfully simple, so simple that it is easily shown by just a few pictures.

This is how it works. I get into an accident and I call 911. I need help. So the dispatcher from Baltimore City sends a police officer, in this case that we are talking about here, Kelvin Manrich and Samuel Ocasio.

What do they do? They go to the scene. They see if there are cars there that need to be repaired, and what do they do? They call Alex Moreno or Edwin Mejia of Majestic and say hey, can you get a tow truck over here? Come get this car.

Alex Moreno and Edwin Mejia either take a tow truck there themselves or they send somebody they contract with, and they go pick up the car, and it ends up at Majestic.

And here's where it gets real simple. Majestic fixes it, sometimes adds a little bit of damage, because they've got to cover this kickback. Samuel Ocasio and Kelvin Manrich go the next day to pick up their $300 cash. Everyone wins, right?

That's why kickback schemes are successful. Everybody gets what they want. Majestic gets cars to fix, and Samuel Ocasio and Kelvin Manrich get money they shouldn't have, and that's what they are charged with doing. They are charged with knowingly taking cash kickbacks to enrich themselves and to benefit Majestic.

Now this is a really important point. This crime is only a crime if they are being paid by Majestic because of their position as police officers.

Think. Why would Majestic want to pay police officers? There are two reasons, trust and access.

I'm going to start with trust. What's the first set of numbers we learn as children? 911, because that's what we call when we are in trouble.

We call 911 if we are robbed. We call 911 if there's a fire. We call 911 if we get into a car

accident. We call 911 because the police are supposed to come and help us.

* * *

[32–38]

[MR. CROWE:]

May it please the Court, ladies and gentlemen of the jury. We were introduced briefly maybe about three hours or so ago. My name is Tom Crowe. I'm a lawyer. I'm a sole practitioner. That means I'm in practice by myself. I have an office here in Baltimore City.

For the next couple of weeks I am going to be with you in this trial, and I am going to be representing, indeed, I have the honor to be representing, Samuel Ocasio in this case, who I will tell you is a brave and an honest Baltimore City police officer.

He's a 36-year-old father of two. He and his wife live in Harford County, Maryland. He was born in Puerto Rico, and for a number of years he served honorably on the San Juan Police Department in Puerto Rico. I think most of you probably know that San Juan is the capital of Puerto Rico.

Approximately five years ago, about 2007, as Ms. Kelly told you, the Baltimore City Police Department decided it had a problem, in that there was a growing population of Spanish-speaking people in the city, and they didn't have enough officers who could speak Spanish.

So at that point there was a recruitment drive down in Puerto Rico. My client was interviewed in

Puerto Rico. He was brought up here to Baltimore for a period of four days for a series of tests.

They did an extensive background investigation in order to assure that the person they were getting was honest, respected, a good police officers, somebody essentially with no skeletons in his closet.

He was then accepted into the police department in 2007, and he came to Baltimore City in 2008. At which time, he entered the Baltimore Police Academy.

At that time, he went through that rigorous program, which Ms. Kelly has described to you. In addition to that, he undertook field training, which she has described to you. He graduated, and he was assigned to the Southern District.

Now for those of you who aren't familiar with Baltimore City, and I guess probably for all of you who aren't familiar with the various police districts in the city, the Southern District is located not terribly far from this courthouse. The police headquarters is over in Cherry Hill. I think those of you who are from this area probably know that that's a pretty dangerous place to work.

Mr. Ocasio, at about this time, also brought his wife and children from Puerto Rico. They moved into Harford County.

You will learn during the course of this trial that Mr. Ocasio is a very respected and, in fact, a very loved member of the Hispanic community up in Harford County, and he is particularly active in the Hispanic church, the Hispanic Pentecostal Church

that he attends up there. But that's really not at the heart of this case.

Not only is Cherry Hill dangerous, but as I expect you will appreciate, the most dangerous time to be a police officer is this midnight shift we have been hearing about.

For the period of time that Mr. Ocasio was in the Southern District, he was assigned to the Southern District on this very dangerous shift, which occupied him between about 11 o'clock in the evening until 7 o'clock in the morning. It is not one of those shifts which people fight for. It is not one of those shifts which people voluntarily choose. It is the type of shift to which a new officer is very often assigned.

Now you will also learn that my client has received commendations for brave actions that he has taken. He has been injured in the line of duty in car accidents, which are not his problem. In fact, he received a commendation as recently, believe it or not, December of last year.

That has some significance because my client's police career effectively ended in February of last year, pretty close to a year to the day right now. At that point, he was suspended, and he is still on that suspension.

Let's not kid ourselves, whatever the result of this trial here today, he is not going to be rehired by the Baltimore City Police Department, and he likely has no career anyplace in law enforcement as well.

Why did he get here? He is here not really because of all of these wiretapped conversations that

you have been hearing about or these pole camera shots at Majestic. He is here because two people have made false allegations about him. One is Alex Moreno and the other is Moreno's brother, who is known as Edwin Mejia.

Ms. Kelly really didn't spend an awful lot of time talking about them. Indeed, if they were my witnesses, I don't think I would spend much time talking about them either.

I mean with the exception of possibly murderers and drug dealers, Mr. Moreno is about as low down and despicable a person as you are likely to meet in your entire lifetime. He corrupted a great number of Baltimore City police officers. We don't deny that. He did not corrupt my client, Samuel Ocasio.

But Alex Moreno has been something of a cancer in the city, and certainly, I think the police department regards him as something as a cancer also.

Ms. Kelly also didn't tell you that during the course of the investigation, Mr. Moreno has made a number of statements about Mr. Ocasio, which we think are demonstrably false. If they don't bring them up in their examination of Mr. Moreno, we are going to do it as well.

What did Moreno do? He paid police officers when he clearly shouldn't have paid police officers. He brought cars into —

He had a number of police officers — again, not Mr. Ocasio. The government won't even allege this — write out false police reports, saying that there was

damage to the cars when there wasn't. The reason for that is so when the insurance company looks at the original police report, it corresponds and matches the damage which Moreno and people at his shop are going to inflict on the cars.

Maybe what's one of his only honest statements, Mr. Moreno said that Mr. Ocasio is not aware that that was something that they were doing.

So what Moreno was doing, he was corrupting police officers. He was cheating insurance companies. Quite honestly, he is making all of our insurance rates go up for things such as this, and people in that industry are, very understandably, a little bit concerned.

Now I am in somewhat of an unusual position. I am standing here between the entirety, and I am basically interposed between the entire might of the United States government and the Baltimore Police Department and my single client, Samuel Ocasio.

But in a sense, I have a lit bit of company, and the company I have are the people who are neutrals, the people who are going to be judging this case.

There is, of course, Judge Blake who has told you that she says what the law is. You may disagree with her, I may disagree with her, the prosecution may disagree with her, but what she says the law is is the law in this case.

* * * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

v.

SAMUEL OCASIO, et al.

Defendants.

CRIMINAL No. CCB-11-0122

JURY TRIAL DAY 2

Before: The Honorable Catherine C. Blake
United States District Judge

Baltimore, Maryland

February 14, 2012

* * *

[28–30]

[DIRECT EXAMINATION OF
CHAD ROBERT ELLIS]

BY MS. GAVIN:

Q Detective sergeant, it might be easier if you come down. I don't know. You can touch the screen I think as well. If you want to come down to talk about this a little bit. What is this map?

A This map is a rendering of the City of Baltimore and it is divided into the nine police districts.

Q So there are nine districts of the city, correct?

A Yes.

Q What are the names of the districts?

A The districts are — I'm going to do this in a two-part answer. The districts are sequentially numbered 1 through 9. I will start at 1. One is the Central. Two is the Southeast. Three is the Eastern. Four is the Northeast. Five is the Northern, 6, Northwest, 7, the Western, 8, Southwest, 9, Southern.

Q So when a police officer —

You talked about, with Officers Ocasio and Manrich, their assignments. Officer Manrich is assigned where?

A Northeast.

Q Then Officer Ocasio was assigned where?

A Southern, Southern District.

Q On the map there are sort of what almost looks like little mini states. What are those with the numbers?

A Each district — the easiest way to explain this is each district resembles its own police department, although they all communicate, and they all one. But each district is divided into sectors and then posts.

So the Southwest District, for example, has — well, let me use the Northwest. The Northwest District has three sectors, and each sector has four to five posts.

So on any given day, if I were today the day shift, 7 to 3, if I was to work 35 post in the Northwest, I would be 6 Baker 35. Baker is the delineation or identifier for the day shift.

Adam is the midnight; Baker, day; Charlie or C for night shift.

Q So when dispatched emergency calls, if a call goes out to you on that shift, and you were assigned to that post sector, that would be — would it be your call number?

A Yes, it would be your call number. For any given day, if you're in patrol, unless you're assigned a post, a permanent post, any given day, you could be, if you're in this district, for example, you could be 611 or you could be 634, or you could even be 691.

I don't want to confuse you, but there are two other — usually in each district there are two other odd post designations which are lagging the numbers. Usually they are 91 and 92.

* * *

[94–103]

[CROSS-EXAMINATION OF
CHAD ROBERT ELLIS]

[BY MR. CROWE:]

Q In what instances would an officer be allowed to use phone number two, the police-issued phone for non-police business?

A Honestly, there is a General Order regarding that, and I believe you are prohibited from long distance use. It's not to be your sole source of communication outside of work.

Q There is certainly no restriction on making calls for non-police business on a personal cell phone which you have with you while you are on duty, is there?

A No.

Q As I understand from this data sheet, Mr. Ocasio was hired in October of 2007; is that correct?

A Hired date, October 24, 2007.

Q He was actually assigned on July 31, 2008. Do I understand that that assignment date is after he completed his five or ten-day internship, and he came on board as an active police officer in the Southern District?

A Five or ten days, no, internship?

Q The period of time when he was riding around with another officer.

A Largely, that's a ten-week field training after the police academy.

Q Does this also show that Mr. Ocasio, on the second page, that he has a special skill and that he is fluent in Spanish?

A Yes.

Q I would next like to turn to Government's Exhibit 126. Do you have that in front of you?

A I do not.

MR. CROWE: Thank you very much. I appreciate that.

Q As I understand it, this is a document called Personnel Service Record. Is that correct?

A Yes.

Q That is a file which is maintained, which the Baltimore Police Department maintains for each of its officers. Is that right also?

A Actually, yes, each of its members, sworn and civilian.

Q You used the word sworn officer before, and the members of the jury may not be familiar with the term. But that is essentially somebody with police powers, the power to arrest; is that correct?

A Yes.

Q Does this report also indicate that prior to joining the Baltimore Police Department, my client served with the San Juan, Puerto Rico Police Department for a period of nine years?

A Yes.

Q Did you testify earlier this morning that the Baltimore Police Department conducts a very thorough background investigation into all of its applicants before it finally hires any one of them?

A There is a background investigation, yes.

Q Is it a thorough background investigation?

A Yes.

Q Would you expect that Mr. Ocasio passed the thorough background investigation which the Department conducted?

MS. GAVIN: Objection, Your Honor.

THE COURT: Overruled. If he knows.

A I would glean that he did, as he was hired.

Q You would be shocked if he had not, would you not?

A Yes.

Q Now the entire Personnel Service Record is in fact much more extensive than what we see here, is it not?

A Yes, it is.

Q It's a file in which Mr. Ocasio's case is probably two or three inches thick; is that right?

A Yes.

Q Would I be correct that you reviewed the entire personnel file before you came into court?

A I have reviewed Ocasio's file that the U.S. Attorney has in its possession, yes.

Q Indeed, are there commendations that Mr. Ocasio received for exemplary, that is, noteworthy performance as a police officer?

A Yes.

Q I'm going to put on the screen what is — thank you very much — Ocasio Exhibit 1. Is that in fact a Letter of Commendation from the Baltimore Police Department?

(Defendant Ocasio Exhibit Number 1 was received.)

A Could you —

Q Yes.

A There you go. Yes, it is.

Q Would you just read the two paragraphs into the record, please?

A Yes. Please accept my compliments for the recent arrest of Michael Singleton on December 22, 2008, after three gunshots were heard in the area of Lemon

and Schroeder Streets. Not only was the suspect arrested, a loaded Jimenez Arms semiautomatic handgun was recovered. Through your enforcement efforts and team work, another violent offender was removed from the streets of Baltimore.

On behalf of the Baltimore Police Department, I thank you for your commitment and professionalism. Please up the good work in making the streets of Baltimore a much safer place to live, work and visit. Sincerely, John P Skinner, Colonel, Chief, Patrol.

Q The Patrol Division is the one to which most of the uniform members that we see on the street belong to; is that correct?

A Correct.

Q Probably the largest, probably the largest division within the Department in terms of manpower?

A Yes.

Q I believe Colonel Skinner is still with the Department; is that right?

A Colonel Skinner is presently the Administrative Deputy Commissioner.

Q Does that mean that he is the second ranking officer in the Department?

A Third.

Q The third ranking officer in the Department. Next I would like to put up what has been marked as Ocasio Exhibit 2. Do you see that this is a second letter from Colonel Skinner.

(Defendant Ocasio Exhibit Number 2 was received.)

A Yes.

Q It's dated May 5, 2010; is that correct?

A Yes.

Q Could you just read the three paragraphs of that short letter into the record?

A I would like to take this opportunity to thank you for your outstanding work and dedication. On April 17, 2010, you responded to 2325 Annapolis Road for a burglary in progress. After a foot pursuit, you arrested Brandon Carter and Jerrel Taylor and recovered a .22 caliber Browning semiautomatic handgun.

As you know, the arrest and prosecution of violent gun offenders is a key component of Baltimore's crime reduction strategy. This strategy will only be successful through the hard work and determination of officers like you.

On behalf of the Baltimore Police Department, thank you again for a job well done.

Q This is a letter which references an April 17, 2010 incident. Is that correct?

A Correct.

Q I'm going to show you what has been marked as Ocasio Exhibit 3. It's a December 5, 2011 letter from I believe the police commissioner or Commissioner Bealefeld. Is that correct?

(Defendant Ocasio's Exhibit Number 3 was received.)

A Yes.

Q Just to get our date straight, my understanding is that Mr. Ocasio was suspended either on February 23rd or February 24th of 2011. Is that your recollection also?

A He was suspended on the 23rd, yes, pending a hearing on the 24th. Correct.

Q At which time, they suspended him without pay?

A Yes.

Q That has been his status since that time. This letter is one which was written a good number of months, I guess probably about eight months, actually closer to, you know, ten and a half, 12, ten and a half or 11 months after he was suspended without pay. Is that correct?

A Yes.

Q The letter refers, does it not, to the same April 17, 2010 service as Colonel Skinner's letter, which was Ocasio Exhibit 2; is that right?

A Yes.

Q This letter is a little bit longer, but I just wonder if you would read that into the record?

A It is always a pleasure for me to congratulate members of the Department for their contributions to the safety and well-being of the citizens we serve. Such exemplary service demonstrates a level of dedication and commitment that is admirable and deserving of official recognition.

The Meritorious Service Board has recently reviewed a summary of your performance on April 17, 2010, where you responded to an armed burglary

call where a woman and her child were in danger when three armed suspects entered the home through a window.

For your exemplary attention to duty, the Board recommends that you receive a commendatory letter. I fully concur with their recommendation as you are truly deserving of the recognition which this letter conveys.

I encourage you to continue to display such professional conduct in your service to the City of Baltimore and our Department. This letter will become part of your personnel record.

Q That letter is signed by the commissioner himself, Commissioner Bealefeld, who is the number one person in the Department. Is that right?

A Yes.

Q What is the Meritorious Service Board which the commissioner refers to in his letter?

A The Meritorious Service Board is a panel that reviews the officer's performance that goes above and beyond what is expected as a day-to-day action of a police officer.

Q Approximately how many people are on that board?

A I believe it's three.

Q Indeed, the fact that the Meritorious Service Board approved that commendation indicates, at least in its position, that Mr. Ocasio's action on that day went above and beyond the call of duty?

A Yes.

Q Is it in fact true, sir, that Mr. Ocasio has no file in Internal Investigations?

A I'm unaware of one.

Q I would like you to take a look at a paper we got from the U.S. Attorney's Office, which I have marked as Defendant's Exhibit 4. I'm sorry. Are you able to read that?

(Defendant Ocasio's Exhibit Number 4 was received.)

A Yes. This is a snapshot of Ocasio's activity or history within Internal Investigations Division.

Q Does it say incident count, zero.

A Yes.

* * *

[114–116]

[REDIRECT OF
CHAD ROBERT ELLIS]

BY MS. GAVIN:

Q Detective Sergeant Ellis, you were asked on cross-examination about a Letter of Commendation that was dated in December of 2011, Defendant's Exhibit Number 3. Do you recall being asked about that letter?

A I do.

Q That letter referred to an incident that had happened in April of 2010. Isn't that right?

A Correct.

Q So it's like an 18-month time frame, is that correct —

A Yes.

Q — between the two events?

A Yes.

Q You were asked questions about — I believe Mr. Crowe asked you whether it was true that Commissioner Bealefeld actually personally signed that letter. Do you recall being asked that question?

A Yes.

Q Do you know whether Commissioner Bealefeld signed that letter or ever saw that letter?

A Those letters are auto signature.

Q So it's a stamp, correct?

A Yes.

Q Who issued those letters with the stamp?

A The commissioner's office.

Q What is the Merit Board that you mentioned? What does that do?

A The Meritorious Service Board is a board that determines whether or not additional, or a commendation or a decoration would be allowed for an officer based on his or her efforts in the execution of their duty, if they went above or beyond.

* * *

[130–146]

[DIRECT EXAMINATION OF
HERNAN ALEXIS MEJIA MORENO]

[BY MS. KELLY:]

Q At that point did Edwin have experience in repairing cars?

A Well, he had experience in manage a business shop.

Q He wasn't actually the person who was doing the painting and repairing fenders, for instance?

A No.

Q Was this in approximately June of 2006?

A Yes.

Q What was the name of the company that you started?

A Majestic Collision Center.

Q When Majestic Collision Center started, was it an auto body repair shop or something different?

A When we started, it was just a mechanical shop.

Q I'm not that great with cars. What's the difference between the body repair and mechanic shop?

A The mechanic shop, it's a lot of grease involved. Cars just come to repair, like oil changes, change axles. Then body work is just fenders. It's pretty much accident cars.

Q Did at some point you change your focus of Majestic from mechanic work to body work?

A Yes. That was the idea from the beginning, to do body work. But the place that we rent, it wasn't zoned to do body work. So we start as a mechanical shop until we changed the place for the zoning to do body work, legally do body work.

Q Where was the shop that you ultimately ended up in that did body work? What was the address?

A 7404 Philadelphia Road.

Q Did you change the name from Majestic Collision Center?

A No. It keeps the same.

Q Oh, it has been Majestic Collision Center?

A It's Majestic Collision Center.

Q I am going to show you what has been marked as Exhibit 41. Do you recognize this picture?

(Government's Exhibit Number 41 was received.)

A Yes.

Q What is it?

A It's the shop that we used to run.

Q So even though it's technically named Majestic Collision Center, the building reads Majestic Body Shop. Is that right?

A Yes.

Q It's the same place.

A The same place.

Q You see this street that is right in front, that is running right in front of the shop?

A Yes.

Q What road is that?

A That's Philadelphia Road.

Q If you see the building sort of in the bottom right, is that the door into the building?

A Which door? I'm sorry.

Q To the right of the building.

A Oh, yes, that's the door to the building. That's the main, the office door.

Q Over on the left, it sort of looks like a garage, what is that?

A That's one of the further bay's door. That place in there is where we were doing the painting and some body work.

Q So is that where cars would go in to get fixed?

A Yes.

Q Then you can see on the picture, it appears that over to the right of the entryway door is a fence with a bunch of cars in the back.

A Right.

Q Why do you have a fence up and cars in the back?

A Well, that's the cars that we were in the process of to fix it or cars that were just left there by customers.

Q The cars in front, is that where customers would park when they would come in?

A Yes.

Q Over on the right, do you see the front of what appears to be a tow truck?

A Yes.

Q Do you know whose tow truck that is?

A That's Mario's Tow Truck.

Q Mario's Tow Truck?

A Yes.

Q Now do you live ne[ar] 7404 Philadelphia Road?

A Yes.

Q How far would you say?

A Like two minutes away.

Q Now I'm going to show you what has been marked as Exhibit 84.

(Government's Exhibit Number 84 was received.)

MS. KELLY: Is this okay, Your Honor?

THE COURT: That's fine.

BY MS. KELLY:

Q Can you see this, Mr. Moreno?

A Yes.

Q Do you see here where it says Majestic Auto Body, 7404 Philadelphia Road?

A Right.

Q Do you see here where your house is?

A Yes.

Q Is this just —

A Right.

Q Are you familiar with where Baltimore City is?

A Yes.

Q So if Majestic is here, is the city on the left side of Majestic or the right side?

A If I'm sitting, it's on the left-hand side.

Q So basically all of this is the city?

A Right.

Q How close, if you know, is Majestic to the city line?

A It's a minute away from the city line, yes.

Q So your shop is just right outside Baltimore City?

A Just right outside, yeah.

Q Now were you and Edwin the owners of Majestic?

A Yes.

Q Were you equal owners?

A Considered equal owners, yeah. It was like 50 and 40, but it was equal owners.

Q Did you own the building that Majestic was in?

A No. We rent the building.

Q Did you pay rent to rent it?

A Yes.

Q Did there come a time when you had too many cars to fit in the location at 7404 Philadelphia Road?

A Yes.

Q And what did you do?

A It's a liquor store with a parking spot right in front of Majestic. So we used to park the cars there.

Q When they wouldn't fit in the back anymore?

A When they wouldn't fit in the back anymore, yes.

Q Did there come a time when you rented additional bays anywhere where you did work?

A Yeah. It's another shop. It's just a mechanical shop down the street towards the city. It's like a half a minute walking, and we rent the place for quite a bit.

Q What would you do in those bays?

A It was just one bay. You can fit, I want to say, four or five cars, and we were fixing the cars there too.

Q Out of you and Edwin, which one of you were responsible for managing Majestic?

A It was more him than I.

Q Who would be responsible, who of the two of you were responsible for personnel decisions, like hiring people or firing people?

A It was more Edwin because he had a little more experience about what kind of person we will hire.

Q What did you do? What was your job?

A My job was responsible to bring vehicles, bring the clientele to the shop.

Q I'm sorry, bring the clientele to the shop?

A Yes.

Q Who is Milton Cisneras?

A He is my cousin.

Q And did he have any role at Majestic?

A He was sort of like the manager of Majestic. He was the person who worked in the office all the time, answering phones, ordering parts, and stuff like that.

Q Do you know somebody by the name of Leonel Sarmiento?

A Yes.

Q Who is he?

A He worked at Majestic as a mechanic. When I say mechanic, he is the person who fixed oil changes, change tires. It was not like body work. It was just mechanical work.

Q So did he work at Majestic when you were only doing body work?

A No. He worked at Majestic when we were just doing mechanical work.

Q How many full-time employees beside yourself and Edwin did Majestic have?

A Full-time employees, we have about four or six, around there.

Q Were all of your employees legally inside the United States?

A No.

Q Were some of them illegally in the United States?

A Yes.

Q Did you always pay your employees legally, and provide them with W-2s?

A No. It was just some of them and some not.

Q Would you pay some of them in cash?

A Yes.

Q At some point, Mr. Moreno, did you, yourself, apply to the Baltimore Police Department?

A Yes.

Q And why did you do?

A I always wanted to become an officer or be in the Army since I was a kid.

Q And did you ever become a Baltimore police officer?

A No.

Q I'm going to turn your attention to the body repair process. Okay?

A Okay.

Q Once a car gets to the shop for auto repairs or body repairs, what is the first thing that needs to get done?

A When the car comes to the shop, the first thing that needs to be done is we've got to wait for an adjuster to come to the shop so the adjuster writes an estimate.

Q Let me stop you there. Who does an adjuster work for?

A The adjuster works for the insurance company.

Q So a car gets a dent. Just imagine it has a big bump on the fender. You need to wait for an adjuster to come from the insurance company and write an estimate?

A Yes.

Q What's an estimate?

A An estimate is paperwork that an adjuster writes on it what kind of damage, and makes a decision whether the car needs to be fixed or not, or what kind of part needs to be replaced.

Q Does an estimate usually have a dollar value to it?

A Yes.

Q What does the dollar value represent?

A That I'm not sure. I know what an estimate is, but my brother was more in charge about doing that than I.

Q When the insurance company paid Majestic Auto Body to fix the car, how did they know how much money to pay the auto repair shop, your shop?

A Well, for the parts that need to be replaced, they would pay by the pain, by labor, if the part needs to be fixed or needs to be replaced.

Q The cost of all of those things, is that what's on an estimate?

A Yes. It was all separate by whoever — for example, the painter was making his money. The

body work, the body guy who fixed the parts was getting the car ready to the painter.

So the adjuster is the one who makes sure that everything is divided. So everybody has a role to go. It's a process.

Q Is it fair to say that the adjuster, because he works on behalf of the insurance company, wants to make sure they are not going to pay too much to have a car fixed?

A Right.

Q Did each of the insurance companies typically have the same adjuster that would come to your shop?

A Pretty much, most likely, yes.

Q Did you become familiar with the various adjusters from the different insurance companies?

A Yes, yes.

Q Now how would Majestic make money? How did money get into Majestic?

A Through the insurance companies.

Q How would the money get from the insurance company to Majestic?

A Say that again.

Q How did the money get from the insurance company to Majestic?

A By check.

Q Was the check typically made out to Majestic or to the person whose car got fixed?

A Most of the time it was to the customer and Majestic, and sometimes it was just through Majestic, and sometimes it was just the check was sent over to the customer.

Q Did Majestic have any other source of revenue beside the insurance company proceeds to fix the cars?

A No, no.

Q What did you do with the insurance company checks that Majestic would get? What would you do with them?

A We would deposit to the bank.

Q Did you deposit them into a personal account or a business account?

A Business account.

Q In the beginning, say in the early 2008 time frame, how was it that you would get cars to Majestic?

A In the beginning did you say?

Q Yes.

A How we started getting cars through insurance you mean?

Q Well, let me back up. Did you advertise?

A Some.

Q Did you go to accident scenes and try to get people to come to get their cars fixed?

A Yes.

Q In early 2008, did you have a high volume of cars coming into Majestic?

A No.

Q Did there come a time when you started to pay Baltimore police officers to refer cars to Majestic?

A Yes.

Q Approximately when was that?

A That was beginning 2009. I can't recall, but it was around there.

Q Could it have been as early as 2008?

A Yes.

Q Is there a particular officer who was the first officer that you recall paying money to refers cars to Majestic?

A Yes.

Q Who was that?

A Officer Corona.

Q Corona?

A Yes, Jhonn Corona.

Q How is it that you met Mr. Corona?

A He lived in the same neighborhood that I lived. So he used to come a lot to get his car fixed, mechanical work on his own vehicle. So he come up with the idea to — actually, it was another towing company that we used to use. I wasn't the owner.

So he comes up with the idea with these two guys that had been working for Majestic pretty

much, because they were there most of the time doing towing for us. So he talked to them first to how to bring accident cars to Majestic. So that's how everything started, through this guy, and this guy explained to me. That's how everything started.

Q Was Jhonn Corona the first officer that you paid?

A Yes.

Q When you first paid Mr. Corona how much money were you paying him?

A It was around $150.

Q Did it come to be that you started to pay other officers besides just Corona?

A Yes.

Q How is it that they found out about it?

A It went through Officer Corona. He started telling other people.

Q Between 2008 and 2009, and when you were arrested in 2011, can you estimate approximately how many Baltimore police officers you paid to refer cars to Majestic?

A It was more than 60 police officers.

Q Were some of those officers some that you would just see one or two times versus a lot of times? Did they vary?

A They varied, yes.

Q Why was it beneficial to you to have police officers refer cars to Majestic?

A So that way I can maintain the shop running. It was beneficial because they are the ones who go to the scenes. When first the accident happens, they are the first people to go to the scenes. So the car, instead of the car going to the city or going to the other shop, they will come to the shop.

Q If cars come to the shop to get fixed, what happens to Majestic?

A Well, Majestic, we will pay the officers.

Q Then does Majestic make money from the insurance companies?

A Yes.

Q Now how would the officers contact you to let you know about a car?

A By phone, phone calls.

Q What phone would they call?

A My cell phone.

Q What was your cell phone number?

A It was XXX-XXX-4614.

Q Did you say it ended in 4614?

A Yes.

Q Now when you would pay the officers, where would you get the money from?

A It was from the bank. Sometimes it was the bank. Sometimes it was cash.

Q Was there a particular account that you would utilize?

A Yeah, from the business account.

Q Did you use your personal bank account or the Majestic bank account?

A The Majestic bank account, yeah.

Q Did you ever give police officers your business card?

A Yes.

* * *

[156–169]

[DIRECT EXAMINATION OF
HERNAN ALEXIS MEJIA MORENO]

[BY MS. KELLY:]

Q What if you sent Rene to tow a car and you weren't there? What would you do? How would you get this filled out?

A Well, we used to give him a stack so he could keep in his own tow truck, and he used to just give it to the people, to the drivers.

Q Then how would it get back to you?

A Either he would put it inside the vehicle that was in the accident or bring the paperwork the next day.

Q Did there come time that officers were telling accident victims that you would pay their deductible?

A Yes.

Q How did that come to be?

A It was through an officer's idea, because back in those days, the customers, they just — the cars come to the shop. The cars didn't stay. It was going somewhere else. I ended up regardless paying the officer.

So it was an officer that come up with that idea tell, them not to pay the deductible so that the vehicle can stay in the shop. So the customer won't say anything.

Q Did that ultimately become sort of the common practice?

A Yes.

Q With all of the officers?

A Yes.

Q Did Majestic also sometimes pay your customers' rental car bills?

A Yes.

Q Why is that?

A So we used to have too many vehicles in the shop. Sometimes the insurance, they just pay 30 days, sometimes 15 days. It depends on the amount of the damage on the vehicle. That's how the insurance will pay for the rental car.

So we used to past those days. So for the customer not to get mad, the shop, we used to just pay it out of pocket, the rental car, so the customer can be happy.

Q Now after you started paying police officers to refer cars to Majestic, did the volume of cars that you had increase?

A Yes.

Q By a lot or a little?

A A lot.

Q Could you estimate in, let's say January of 2011, what the percentage of your cars were that were referred by officers at Majestic?

A I would say 95 to almost a hundred percent.

Q Did it increase quickly or did it take some [] time?

A No. It increased quickly.

Q Is there — strike that.

For an insurance company to pay Majestic for tow charges, does the adjuster have to determine that the car wasn't drivable?

A Yes.

Q So, for instance, I can't get my car towed if I could have driven it and expect to get repaid by my insurance company?

A Right.

Q So in the times when you submitted fake tow receipts and the car had been driven in, what did you do to the car to convince the adjuster that it was not drivable?

A Make that car that it was not drivable. For example, if it was a taillight, that it was near the

accident, just break the taillight so the car would not be drivable.

Q Are there protocols that an insurance company would determine that a car is not drivable?

A I cannot understand that.

Q What has to be wrong with the car for it not to be drivable?

A The bumper has to be down for the insurance or for the adjuster specifically, things that are dangerous for the customer, the driver to drive the car.

Q What about the side mirrors?

A That can be, yes. Mirrors, it can be mirrors. It can be bumpers. It can be headlights, taillights. It can be busted windows.

Q You or somebody at the shop would actually do that damage to the car?

A Yes.

Q Did the accident or did your customer always know you were doing that?

A Most of the customers, yeah.

Q Were there some that didn't?

A Some, yeah.

Q Did you also add damage to cars simply to increase Majestic's profit?

A Yes.

Q Did you do that to every car that was at Majestic?

A Not to every car.

Q Did the customers know that you were doing that?

A Say again.

Q Did the customers whose car it was know that you were doing that?

A Some of the customers.

Q But some didn't?

A Some didn't.

Q Have you ever heard of a person named Chupa?

A Yeah, I heard about Chupa.

Q Do you know his real name?

A No.

Q Who is Chupa to you?

A He was a tow truck driver that every time I was being called by an officer on the scene, he was always there too. It wasn't his own tow truck. It was just another company's tow truck.

Q When you had the falling out with the Martinez brothers that you described earlier, do you know whether they started towing for another body shop?

A Yes.

Q And who is that?

A It is called, used to be call — it's not any more — Best Body Shop.

Q Did at some point some of the officers who had been referring cars to you stop referring them to you, but instead, to Best Body?

A Yes.

Q Did Chupa have anything to do with Best Body, to your knowledge?

A He used to tow the vehicles over to that shop.

Q Now you said that you sometimes would drive the Mario's tow truck?

A Yes.

Q Would you drive the Mario's tow truck into the city to pick up cars that had been referred by officers?

A Yes.

Q Was there any risk in going into the city to pick up cars?

A It was a lot of different risks, you know.

Q Describe that if you would for the jury.

A It can be people from the city. It can be other tow trucks that were getting mad, especially at night. You always kind of fear about going at night into the city.

Q Was it competitive to tow trucks in the city?

A Yes, very.

Q And who was in competition?

A It was, I believe it was Frankford Towing. It was — I can't recall, but it was some big companies.

Q Big tow companies?

A Big tow companies.

Q Do you know what a Medallion tow company is?

A Back then I didn't know what it was. Now I do. I know.

Q Did you ever apply to be a Medallion tow company?

A No. I tried. But to apply to be a Medallion company, you have to have more than 10 or 15 tow trucks. You have to be a big company.

Q And you never had 10 or 15 tow trucks?

A No.

Q Did you have any understanding one way or the other as to whether your tow company was permitted to tow vehicles in Baltimore City?

A Yeah.

Q What was your understanding?

A My understanding — well, at the beginning, I thought it was just I can tow any cars. I don't recall what year it was. A sergeant — I forgot his name — he brought paperwork over to Majestic saying what kind of vehicles we can tow.

So about the specific time it was saying in the paper if the vehicles were impeding traffic in the middle of the street, you cannot pick it up. It was just the vehicles that they were on the side of the street.

Q So what was your understanding? Which cars could you not tow?

A The ones that were in the middle of the street impeding traffic.

Q The ones impeding traffic?

A Yes.

Q That it would be okay for you to tow cars that were parked that were not impeding traffic?

A Yes.

Q Did officers who referred cars to you refer cars to you that were in fact in the middle of the street?

A Yes.

Q Now did you have any particular type of cars that you preferred to come to Majestic?

A The newer models.

Q Why newer models?

A The older models, the insurance, they would call a total loss, because there's a limit to every vehicle.

So the new models, they were more expensive. It's a little harder for the insurance company to total loss those vehicles.

Q Why does Majestic not want the car to be a total loss?

A Because they want to make money. We want to make money.

Q If a car is a total loss, does Majestic fix it?

A No.

Q Did you have any preference about whether cars had insurance or not?

A Well, the car has to have insurance, yes.

Q Why is that?

A So the insurance can pay for it, for the balance of the vehicles.

THE COURT: Let me know when you're at a good breaking point.

MS. KELLY: This is probably as good a time as any.

THE COURT: We well take a ten-minute recess and we will be going until about five.

(The jury was excused and a recess was taken.)

(The jury entered the courtroom.)

THE COURT: You can be seated.

Ms. Kelly.

MS. KELLY: Thank you.

BY MS. KELLY:

Q Mr. Moreno, prior to the break we were discussing that you would prefer cars that had insurance coverage. Do you remember that?

A Yes.

Q Were there sometimes that you would inquire of the officer whether a car's air bags had deployed?

A If it's a newer model, if the air bags from the vehicle, they deploy, the insurance will total loss the vehicle.

Q So do you want cars with air bags deployed?

A No.

Q Explain again why you don't want cars with air bags deployed.

A Because if it's a new model vehicle, 2010, 2011, if it has two air bags or one air bag deploy, the adjuster total loss the vehicle.

Q If the car is a total loss, then what?

A Then we don't get paid, but we still pay the officer.

Q Did you talk openly with each officer about adding damage to the cars once they were at Majestic?

A Most of them.

Q But all of them?

A Yes.

Q All of the officers?

A Most of the officers, because there were some officers that they might send just one vehicle, and they disappeared. But it was most of them, yes.

Q Were there officers who did not know, who you didn't talk to about adding damage to the cars?

A The officers that were sending more, I mean a lot of cars to the shop, they know. They knew about it. But what I can say, if it was an officer that just sent one car a month, we didn't discuss that.

Q So there were some officers who you did not discuss it with?

A Yes.

Q Were there some police officers who would provide you with accident reports or MAARS reports about damage to cars that they didn't actually see get damaged?

A Yes.

Q Were there a lot of officers who would do that or a few?

A It was a few.

Q Can you estimate how many?

A I would say about five, ten officers.

Q When you would pay officers with cash, did you usually have to go to the bank or did you keep large sums of money at Majestic?

A Usually we go to the bank.

Q Did sometimes you pay some officers by check?

A Sometimes.

Q Were there some officers that you never paid by check?

A It was some, yeah, I didn't pay by check. I never paid by check, yes.

Q If you paid the officer by check, what would you indicate the reason was?

A If I never paid by check?

Q I'm sorry. If you wrote a check to an officer, would you indicate what the reason was?

A Well, we would put on the bottom of the check refers or sublet.

Q Sublet?

A Yes.

Q Did you sometimes write parts?

A Parts, yes.

Q The checks weren't for parts; is that right?

A No.

Q And they weren't because they were subletting space?

A Right.

Q Did there come a time in 2010 when you didn't pay officers by check anymore?

A Yes.

Q Why was that?

A The reason why, it was more the officers who were sending cars to the shop. It was whatever they preferred. So by that time, most of the officers were just requiring by cash better than checks.

Q Did you and Edwin have any disagreements over the fact that Majestic was paying officers to refer cars?

A Yes, sometimes.

Q What was the disagreement?

A That disagreement was that we were getting too many cars and the shop wasn't making money. So all the money was going to the rental cars. It was going to the officers. It was going to parts. That was most of the disagreement about it.

Q So while your volume of cars was increasing from 2008 to 2011, how would you describe your profits?

A It was a mess. We couldn't — my job was to maintain the shop, bring in cars, bring in customers to Majestic.

Q Did Majestic have profits in 2010?

A We used to keep some, not a lot of money in the back, but we used to keep some money. Yes.

Q But was the profit consistent with the increase in volume of cars?

A Yes.

Q Turning your attention to February 2011, were you and your brother arrested?

A Yes.

Q Are you aware that a search warrant was executed at your home?

A Yes.

* * *

[175–189]

[DIRECT EXAMINATION OF
HERNAN ALEXIS MEJIA MORENO]

[BY MS. KELLY:]

Q How do you know Mr. Ocasio?

A How do I know Mr. Ocasio? I know Mr. Ocasio through other officers.

Q What kind of relationship do you have with Mr. Ocasio?

A Instead of — I just know Mr. Ocasio just through sending cars to the shop.

Q Are you friends with him?

A No.

Q Have you ever been to a social function with him?

A No.

Q Have you ever played soccer with him?

A No.

Q Have you ever been out with his wife and your wife?

A No.

Q Did you meet or did you speak with Mr. Ocasio for the first time in May of 2009?

A Yes.

MR. CROWE: Objection, Your Honor.

THE COURT: Overruled.

BY MS. KELLY:

Q I'm going to show you what has been marked as Exhibit 75A, just the first page. Do you see at the top of this page where it reads statement for?

A Yes.

Q What does it say?

A At the top of the statement it says Majestic Auto Repair Shop, LLC, statement for.

Q Do you see a mobile number?

A Yeah. That's my cell phone number.

Q Do you see the highlighted portion there?

A Yes.

Q Do you see a phone number listed there?

A Yes.

Q Do you recognize that phone number?

A Yes.

Q Whose is it.

A Samuel Ocasio.

Q Does that show on May 14, 2009, he called you?

A Yes.

Q Is that around the first time that you started to speak with Mr. Ocasio?

A Yes.

Q Can you recall the first time that you spoke with Mr. Ocasio?

A That I don't remember exactly what we talked about, but I do remember that we spoke.

Q Can you recall the first time that you actually met him face to face?

A The first time, if I'm not mistaken, the first time I met him, it was an accident. It was a white Ford Taurus. It was like a 19 — I mean 2006 or 2008.

It was on Lombard. I don't remember the other street. But that was the first time that I recall that I met him. But it was something quick. It was nothing like we talked for four minutes. It was something like in and out.

Q So you're saying that the first time you met Samuel Ocasio was on an accident scene?

A Yes.

Q You had never fixed his car?

A No.

Q Had never met him in any other way?

A No.

Q You recall that the car that was in the accident, is that what you were describing, was the Ford Taurus?

A The Ford Taurus.

Q Okay?

A It was a white Ford Taurus.

Q Now generally speaking, when you spoke to Mr. Ocasio, was it in Spanish or English?

A Spanish.

Q Do you know what country Mr. Ocasio is from?

A I believe he is from Puerto Rico.

Q Were you able to understand him when he spoke to you?

A Yeah, like 95 percent.

Q Do you recall how it was that Mr. Ocasio got your phone number and called you?

A I believe it was through an officer.

Q Do you have any idea who that officer is?

A I recall that it might be two officers. It might be Officer Rodriguez, which is from the same country, or another officer. His name is Angel Gonzales. He's from the same country as well.

Q Why is it that you think it was one of those two who gave Ocasio your phone number?

A I think it was more through Rodriguez, because they used to talk a lot.

Q Have you ever seen Mr. Ocasio and Rodriguez together?

A Yes.

Q Did you ever pay Rodriguez for referring cars to you?

A Rodriguez, yes.

Q Did you ever see Mr. Ocasio with any other police officers than the two you just named, Rodriguez and Gonzales?

A No.

Q When was the last time before today that you saw Samuel Ocasio?

A It was last year. It was at Majestic.

Q Was it before or after you were arrested?

A After.

Q Why did you see him?

A Well, he just came to the shop.

Q Did you invite him?

A No, I didn't invite him.

Q What happened when he got there?

A I remember I was not working, but I was with the mechanic, Leo, the mechanical guy. We were working. I think my stepfather was there too.

So he just come and talk to me about the incident after we were arrested. I remember he told me that, he said that it was on camera or something at my house, that you guys had it installed so to keep track of what I was doing.

Q He told you that there were cameras installed at your house by the government?

A Yes, yes.

Q Is Samuel Ocasio one of the Baltimore police officers that you paid for referring cars to Majestic?

A Yes.

Q Was there a particular time of day or night that Mr. Ocasio would typically call you?

A Yes.

Q And what was that?

A It was when there was an accident.

Q But I mean was it particular to the day or nighttime?

A It was the nighttime.

Q Usually overnight?

A Yes.

Q Do you know a Baltimore police officer named — strike that.

How do you know Kelvin Manrich.

A I know him through other officers.

Q Another officer. Who?

A That used to work the Northeast District.

Q Who is that officer?

A I believe it's Valentine.

Q Last name Valentine?

A Yes. I think the first name is Osvaldo.

Q Osvaldo?

A Yes.

Q Is that spelled O S V A L D O?

A Yes.

Q I'm showing you what has been marked as Government's Exhibit 76. Do you see Government's Exhibit 76?

A Yes.

Q Do you see that the first date that is on here is February 21, 2010?

A Yes.

Q Is that approximately when your first contact was with Mr. Manrich?

A Yes.

Q Do you know which district it was that Mr. Manrich worked in?

A Northeast District.

Q Do you know whether the Northeast District is close to Majestic or not?

A Yes, it is close.

Q Does Mr. Manrich speak Spanish or English?

A He speaks English.

Q To you?

A Yes.

Q Were there other Baltimore police officers in the Northeast to whom you paid money to refer cars to Majestic?

A Yes.

Q I think you mentioned Officer Valentine, right?

A Yes.

Q Was Officer Rodriguez also in the Northeast?

A Yes.

Q Have you ever seen or know Officer Manrich to be on a scene or have association with Officer Valentine?

A Yes, there were. There was a lot of times when they would talk to each other or I would see them together.

Q How about Officer Manrich and Officer Rodriguez?

A Yes, but it was more with Officer Valentine than with Rodriguez.

Q Do you recall the first time that you met Officer Manrich?

A The first time that I met, I don't know exactly what date was it, but I do remember exactly how I met him, yes.

Q Where were you?

A I was at Majestic and I got a call by Officer Valentine to go to an accident scene. Officer Manrich was at that accident. So that's how I met him.

Q Mr. Manrich was at the accident scene?

A Yes.

Q With Officer Valentine?

A Yes.

Q Do you have a friendly relationship with Mr. Manrich?

A No.

Q Do you ever go to parties with him?

A No.

Q Do you know his family?

A No.

Q Did Mr. Manrich have any nickname that people often called him?

A Not people, but we used to. Sometimes we just called him Hindu.

Q Hindu?

A Yeah.

Q When you say we, who do you mean?

A Like people from the shop.

Q Your brother?

A My brother, yeah, Milton.

MS. KELLY: Court's indulgence.

Q Mr. Moreno, we are going to start going through various incidents chronologically. Okay?

A Okay.

Q All right. Turning your attention to a night at the Latin Palace, have you ever been there?

A Yes.

Q Do you ever recall a time that you were there with Officer Rodriguez?

A Yes.

Q Could you tell the jury how it was that you came to be at the Latin Palace with Officer Rodriguez?

A Officer Rodriguez, he was driving a Toyota Corolla, a 2010 I believe. He couldn't make the payments on the vehicle. He had some connections with this guy Leo Sarmiento, which is the mechanic, to have the car disappear.

So he passed by the shop to pick me up. So we came and parked the car, or he came and parked the car somewhere.

The car had already disappeared. We were just going to go in his vehicle to call the police and make a statement.

So when he picked me up in his own car, a Honda Civic, two door, we were on the way to do that, and I got a phone call by Officer Ocasio that he had an accident scene, that we have to go.

So we come back, left Officer Rodriguez vehicle in the shop, and we left in the tow truck.

Then I got another phone call, telling me to wait. I don't know if everything was clear.

But at the time I was in the tow truck with Officer Rodriguez, so he was asking what we're going to do. You know, Officer Samuel called me back so we can pick up another vehicle.

So I told him we can hang out at the Latin Palace, which is a club, a Spanish club that is on Broadway. So we hang in there for a couple of minutes until Officer Ocasio called me.

But I recall that Officer Ocasio called back and talked to Rodriguez, because I didn't know where the address was, how to go to pick up the car.

So that's how it ended up like it did. We ended up going to the scene with Officer Rodriguez, and Officer Ocasio was at the scene.

Q So let me back you up. When you said that Officer Ocasio called you and you had to go back and get the tow truck, which tow truck did you get?

A It was Mario's. I was driving it.

Q So at this time you had Mario's tow truck?

A Yes.

Q Did you and Rodriguez ride in the tow truck together?

A Yes.

Q And you drove it to the Latin Palace?

A Yes.

Q Do you recall where it was that you went, where the scene was where Samuel Ocasio called you to go to?

A It was, if I'm not mistaken, it was the same street that I had first met him, but it was just down — it was a little hill — down the street.

Q I'm going to show you —

Well, let me ask you this. The call that you got from Samuel Ocasio, was it during the day or the night?

A During the night.

Q I'm showing you what is marked here as Government's Exhibit 75B. Do you see this?

A Yes.

Q Do you see here where I'm pointing here, January 17, 2010, at 12:22 a.m.?

A Yes.

Q Do you see — well, let me ask you, whose phone number is this?

A That's Mr. Ocasio's number.

Q Whose number is this?

A My cell phone number.

Q January 17, 2010, about the time you were at the Latin Palace?

A Yes.

Q I'm sorry. What area of the city did you say that you went to with Rodriguez with the tow truck?

A It was by Lombard. It was almost the same street that we first met. It was on Lombard, and I cannot recall the other street.

Q How far away from that is the Latin Palace?

A I would say about 15 to 20 minutes, maybe.

Q When you got to the accident scene, was Officer Rodriguez with you in the tow truck?

A Yes.

Q And was Mr. Ocasio on the scene?

A Yes.

Q Did Officer Rodriguez and Officer Ocasio speak to one another?

A They talked, but it was like, they were like pretending that they didn't know each other.

Q That's what it seemed like to you?

A Yes. Officer Rodriguez, he was still wearing his uniform, the police pants. He was still wearing his gun and he was wearing a white shirt.

Q Did he have his uniform shirt on?

A No, just the pants.

Q Just the pants.

A But he was wearing his gun.

Q Just so we're clear, you and Rodriguez were on your way to falsely report Rodriguez's car being stolen?

A Right.

Q You were going to go with him to do that?

A Right.

Q Do you remember what kind of car it was that you picked up in the tow truck with Rodriguez that night?

A I believe it was an Infiniti.

Q An Infiniti?

A Yes.

Q I'm going to show you Exhibit 39A. Can you see that picture?

(Government's Exhibit Number 39A was received.)

A Yes.

Q I'm going to bring them up to you. There might be a little bit of a glare.

Do you know what kind of car that is?

A That's an Infiniti.

* * *

[231–232]

[DIRECT EXAMINATION OF
HERNAN ALEXIS MEJIA MORENO]

[BY MS. KELLY:]

Q Now turning your attention to the middle of this page, when you said to Mr. Ocasio, no, but when you talk to the guy, look, blah, blah, blah, blah, and what, did you lose your touch, Samuel, or what's the matter, what were you asking Mr. Ocasio at that time?

A He forgot how to talk to people?

Q What do you mean talk to people?

A Like try to convince people so that he can bring cars to the shop.

Q When you say people, who are you referring to?

A Customers, like the drivers of the vehicles.

Q Where does he encounter these people?

A In the accident.

Q So the people who are at the scene?

A Yes.

Q Generally speaking, why are you and Mr. Ocasio discussing the different types of cars on the scene and what years the cars are, years and type?

A Because I didn't want the cars being too old. I just wanted the cars that were a newer model, and if they were in an accident, so we could fix them in the shop.

Q Why is it that you want these cars, the newer cars to come to the shop so you can fix them?

A So we can get paid and we can pay the officers as well.

MS. KELLY: All right. If you could, Michelle, please play a portion of Call 1813, which correspond with Exhibit Number 91E.

THE COURT: I'm thinking this might be a good time to break —

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

v. **CRIMINAL No. CCB-11-0122**

SAMUEL OCASIO, et al.

Defendants.

JURY TRIAL DAY 3

Before: The Honorable Catherine C. Blake
United States District Judge

Baltimore, Maryland

February 15, 2012

* * *

[119–121]

[DIRECT EXAMINATION OF
HERNAN ALEXIS MEJIA MORENO]

[BY MS. KELLY:]

Q Now I'm turning your attention to the beginning of this call, where Mr. Ocasio says what are you doing, are you trying to take my Southwest connection away from me? What did you understand him to be talking about?

A What I'm understanding is because he was trying to gather connections to other officers about getting cars to the shop, and I believe Victor was working that sector. So because Victor bring his car over to the shop, he thought he was talking to Victor about bringing cars to shop.

Q When you say you thought Victor worked in that sector, do you mean in the Southwest District?

A Yes.

Q So Victor was an officer in the Southwest District, and is that what you're talking about in the call?

A It seems like it, yes.

Q Is that what you remember?

A Yes.

Q Then when Mr. Ocasio says that's my, that's my Southwest connection, I'm trying to set up an intensive network of intensive tow trucks, what did you understand Mr. Ocasio to be talking aren't?

A Because other officers in other sectors, he took that example from other officers. The other officers were making money off other officers.

For example, there were officers who tell other officers to bring cars to the shop, but they will pay him like $50 and they will keep the rest of the money.

Q After this phone call, did you meet Victor in person?

A Yes.

Q Did you talk to Victor about referring cars to Majestic for money?

A I asked him and he said he already knew about it.

Q The best that you can recall, what did you say to Victor about referring cars to Majestic?

A Did you talk to, I remember I said to him did you talk to Ocasio about cars, sending cars here, and he said yeah, I already got it.

Q Did he seem to understand what you were talking about?

A Yes, yes.

Q When you said earlier that Victor's car was a total loss — do you remember that?

A Yes.

Q Did you add damage to Victor's car?

A It was a small accident, because the car wasn't worth much anyway. It was a small thing. It was little damage. It was nothing big.

* * *

[185–200]

[CROSS-EXAMINATION OF
HERNAN ALEXIS MEJIA MORENO]

BY MR. CROWE:

Q Let me change the question. You in fact recruited most of the officers, did you not?

A I didn't recruit anybody.

Q Was it also true that after the scheme got going, about 90 to 95 percent of the cars Majestic received were things that were referred by police officers?

A Right.

Q You had a private office at Majestic, didn't you?

A Did you say private office?

Q Private office, yeah?

A No.

Q You had an area where your desk was?

A No.

Q Did you have a wall in Majestic where you had pictures of cars that you were fixing?

A It was pictures in the front of it, but it was for all cars.

Q Did you tell people on occasion that almost all of those cars were referred by police officers?

A Tell people that?

Q Yes.

A No.

Q Do you know a man by the name of Andre Hibler, a Baltimore City police office?

A You say Andre?

Q Andre.

A I don't remember his name.

Q Don't remember that name at all. The last name was Hibler, H I B L E R?

A No. Maybe if I see his face, I probably would remember, but I don't know.

Q Okay. But you were the person who arranged for payments for the officers, weren't you?

A It was me. It depends if I was there or if there was Edwin there.

Q But if you and Edwin were both there, that was your job?

A Right.

Q You in fact were much more involved than your brother, Edwin, were you not?

A Right.

Q Now there were also officers who in turn recruited other officers; isn't that right?

A Right.

Q On some of those officers, for a period of time, payment to several officers would go to the primary officer who did the recruiting, and then they would split up the money. Is that correct?

A Right. It was pretty much one officer would tell others, but he didn't tell how much money so he could pay the others.

Q But Mr. Ocasio was never one who had any officers, even by your accounts, any officers underneath him?

A He start with Victor.

Q Pardon?

A He start with Victor.

Q Victor is the fellow whose car was called from the Southwest District?

A I think so, but he started with Victor, telling Victor. Then it's in here saying, he spoke to me saying that he was going to create a network.

Q We'll get to that too in a little while. But essentially you're saying that the only one that he referred to you is this fellow named Victor?

A Right.

Q Mr. Ocasio wasn't working under any other officer in the sense that you were paying the other officer to pay him; is that correct?

A He was referred to Rodriguez, I believe, or Gonzales. But I don't know if they gave him money. I don't know.

Q But it was not a situation where you were paying either Rodriguez or Gonzales and they were funneling the money down to Ocasio?

A No.

Q Essentially the agreement that you testified you had with Ocasio was just between you and him, wasn't it?

A It was between him and Rodriguez as well, because Rodriguez knew a lot about Ocasio.

Q But even by your account, Rodriguez didn't participate in what he was doing?

A I don't know. I don't remember if he took money or not from Ocasio.

Q You don't remember. That's fine.

Now am I correct that tens of thousands of dollars were paid out by Majestic to police officers in the form of checks?

A It was checks or cash.

Q Am I correct that tens of thousands of dollars were paid out to Baltimore police officers by check?

A I said both. It was checks or cash.

Q Am I correct that —

THE COURT: I think you're not understanding his question, Mr. Moreno.

I think if you would just tell him you want to know the amount of the checks.

Q I'm just asking about checks. Is it true that checks were written to Baltimore City police officers out of Majestic's account, and that if you added up just those checks, it would have been tens of thousands of dollars?

A Right, yes.

Q There was never any check paid to Mr. Ocasio, was there?

A That I don't remember.

Q You don't remember? Was there ever any check paid to Mr. Manrich?

A That I don't remember either.

Q Have you ever, have you or, to your knowledge, has your brother, Edwin, sat down and tried to total the sum of all of those checks?

A Did he what? I'm sorry.

Q Have you ever sat, have you or Edwin ever sat down with the checks in front of you and added them all up to see what they amounted to?

A Oh, no, never.

Q Do you know if the FBI or if the Baltimore City Police Department has done it?

MS. KELLY: Objection, Your Honor.

THE COURT: Overruled. If he knows.

Q Do you know if law enforcement has done it?

A I don't know.

Q Have you ever sat down and tried to calculate how much money was paid out to Baltimore City police officers in cash?

A I don't know, sir.

Q Is there any way, is there any way you could do that from the records that you have right now?

A Right now, I don't have any records with me. Sorry.

Q If you had the record, is there any way you could do it?

A It would be tough because I don't know. It was not just officers. It was some people involved, like regular customers that were bringing in some cars, and paying cash as well. So it would be tough to say how much.

Q Do you have any idea as to, you know, to the nearest hundred thousand dollars how much was paid out in cash?

MS. KELLY: Objection, Your Honor.

THE COURT: Sustained.

MR. CROWE: Say that again.

THE COURT: There's no number that we've got in evidence like that.

MR. CROWE: Okay.

BY MR. CROWE:

Q Is it your understanding that at least a hundred thousand dollars —

MS. KELLY: Objection.

THE WITNESS: I don't know, sir.

THE COURT: Overruled. I think where he was going, you're asking what his recollection and understanding is?

MR. CROWE: Yes.

THE COURT: Go ahead.

BY MR. CROWE:

Q Was it at least a hundred thousand dollars?

A I don't know.

Q You don't know. Okay.

Now you have testified in terms of the cash — You said that once this scheme got going, police officers were bringing in cars all the time, didn't you?

A Right.

Q In fact, I think you even said that there was, there was a disagreement between you and your brother. Do you recall mentioning that this morning?

A Right.

Q The disagreement, I think you said, had something to do with the fact that you had an awful

lot of cars coming in, but, you know, you had an awful lot of expenses in terms of paying officers, you know, absorbing people's deductibles, and things of that nature, that Majestic was not making very much money?

A Right.

Q What was the disagreement between you and Edwin? What was your position, and what was Edwin's position?

A It was that we have too many cars in the shop, and the shop was too small.

Q Was there a disagreement between the two of you on that point?

A It was just about that. It was too many cars, and we didn't have enough people in the shop. It was too small.

Q Did you and Edwin have a disagreement as to whether you should —

Well, you said that you and Edwin had a disagreement. What was the disagreement?

A Just about that.

Q I understand it was about that, but what was his position, and what was your position?

A Well, my position is to either tell not to bring any more vehicles to the shop, but it was more than we would just wake up, because at the end, I just stopped going out and there were vehicles parked in front of the shop. The cops were like that's mine, and I don't even know if that was their cars.

Q So your position was you wanted to shut it down, or at least slow it down?

A Right.

Q And what was Edwin's position?

A Same thing.

Q Okay. In fact, cars were coming in very, very frequently, weren't they?

A Right.

Q When you had your trip to Honduras in December of 2010, you were getting calls from your brother about the number of cars that was coming in, and it was quite a bit, wasn't it?

A Well, it seemed like it was a lot of activity, but it was not that many. It was maybe two, one or two cars.

Q I think we also played a call between you and Mr. Manrich where you were saying, in fact, shortly after you got back from that trip, where you were saying that an awful lot of cars were coming.

Do you recall listening to that this morning?

A I'm sorry. Say that again.

Q Do you recall listening to a call this morning where you were telling Officer Manrich that a lot of cars were coming in?

A No, no, that a lot of cars were going out. That's what it is on that thing.

Q A lot of cars were going out?

A Out.

Q From where to where?

A No, no, out. Like we're getting cars finished, so we are getting a lot of cars out.

Q You were turning around a lot of cars and sending them out?

A Right.

Q Now did you tell — when you first talked to the FBI, you told, and to Detective Smith, you told them that you thought Rodriguez had recruited Mr. Ocasio, didn't you?

A No, I told them that it can be between Rodriguez or Gonzales.

Q Well, didn't you originally tell them that it was Rodriguez alone?

A No. I said it was Rodriguez or Gonzales. I couldn't remember who exactly was the person.

Q Did you later tell them that it could have been either Rodriguez or Gonzales?

A I think from the beginning I was telling them that it was both.

Q Okay. Well, we'll explore that with other people.

Did you in fact even tell the agents that you recalled that Mr. Rodriguez had introduced Mr. Ocasio to you at Majestic?

A No. It was over the phone. The first time I ever talked to him was over the phone.

Q You're saying that it was over the phone?

A Right.

Q Did you later explain to Special Agent Guynn and Mr. Smith that you knew that Rodriguez and Ocasio talked, and you just assumed that Rodriguez had made the introduction, but you did not know it?

A Because he, Officer Ocasio talked about Rodriguez and talked about Gonzales as well.

Q The question was — I'm not sure that you answered the question. I am not sure that I heard the answer.

Did you at a later time tell Special Agent Guynn and Detective Smith that you had said Rodriguez had introduced you to Ocasio because you knew that the two of them talked, and you just assumed that that was the way it happened, but did not know it?

A I always heard that it was assuming that it was Rodriguez that introduced him to me, that I had spoke to him over the phone, but in the same way I know, because the same way Rodriguez and Gonzales were talking to him, that's the only people that knew

Officer Ocasio.

Q That's a conclusion that you drew from what you knew?

A Right.

Q Now you had mentioned a couple minutes ago that you thought Mr. Ocasio had referred Victor from the Southwest District to you. Do you recall that?

A Right.

Q Did you also tell the FBI that Mr. Ocasio had referred an officer from the Southeast District by the

name of Andre, A N D R E, or possibly Andres, A N D R E S, Hibler, H I B L E R?

A I don't remember.

Q You don't remember saying that?

A Yeah, I don't remember that specific officer. Maybe it was one of the officers who tried to send vehicles to Majestic. That's why I can't remember.

Q Well, you know, if in fact you told that to Mr. Guynn and Detective Smith, why would you have told them that?

A Remember, it has been a year, so it has been a long time. So back then, for me to remember every single person. Now if you tell me names, like I'm just going to remember the people who most send cars to Majestic. I'm not going to remember a person that send one car and then disappear for months.

Q Okay. Ocasio never told you that he told Victor from the Southwest District, this fellow I mentioned, Hibler, or anybody else about the scheme you had to pay people, did he?

A He did tell me about Victor.

Q Pardon?

A He told Victor.

Q When Reillo, when Victor came into your shop, and this is fairly late in the scheme, didn't you in fact explain the scheme to him?

A No. I asked him if he knew about the cars. He stopped me right there. He was like no, no, no, I've already got it, Ocasio explained that to me.

Q And you're sure about that?

A Yes.

Q Okay. One of the hallmarks of your operation was to add further damage to cars that were brought into Majestic. Is that correct?

A Right.

Q My guess is you did that more often than not?

A I don't know how often. It started with other police officers that were making false reports about damage on the vehicles and they were telling me you've got to do this because it's on the report.

So when I first opened the shop, I didn't know anything about anything. So like I was saying, yeah, it was the officers. They start writing the false report about damage on the vehicle. So the ones were telling me what to do, because it was on the police report.

Q So you are telling me that it was originally police officers who suggested to you that they should write police reports showing damage, showing non-existent damage so you could collect extra money from the insurance companies?

A Right.

Q What officers?

A You want names?

Q Yes?

A Centron, Feliciano, some other officers I can't remember, but they were the ones that —

Q What about Rodriguez and Valentine?

A Probably Rodriguez. I don't know nothing about Valentine, but they knew, they knew how —

Q So Rodriguez was writing false reports; is that correct?

A Oh, you're asking me if Rodriguez? I don't remember, sir. I'm sorry.

Q Was Valentine writing false reports?

A I don't remember.

Q Ms. Ocasio certainly wasn't writing false reports, was he?

A Ocasio, no, he didn't write false reports.

Q In fact, you testified that Ocasio, you never discussed with Ocasio the fact that you were adding damage to the cars. Isn't that right?

A I say I don't remember, but I believe I did because of the damage on his own vehicle.

Q So you think you did, but you're not sure?

A I'm positive, more positive than negative.

Q So now you're positive. Okay. I'm not making much progress.

How did you manage to add damage to cars where that damage wasn't reflected on the original MAARS Report, on the original police report of the accident?

A Well, the cops would tell me where the damage was, where to put the damage on the vehicle.

Q But when a car simply came in, and you had no idea that the report was written falsely, how could you add damage to it?

A The only way that I was adding damage to it was when the cops were telling me. So most of the time they were telling me to add damage on the vehicle.

Q So if the cop didn't, if the cop didn't tell you that there was damage, about non-existent damage in the report, you wouldn't damage the car?

A Sometimes, yes.

Q Sometimes you would. How would you decide how to further damage that car where you had no reason to believe the police report was false?

A Well, if it was damage in the same spot, just, you know, make it bigger in the same spot.

Q You would do more damage to the same spot; is that correct?

A Right.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

v. **CRIMINAL No. CCB-11-0122**

SAMUEL OCASIO, et al.

Defendants.

JURY TRIAL DAY 4

Before: The Honorable Catherine C. Blake
United States District Judge

Baltimore, Maryland

February 21, 2012

* * *

[36–57]

[DIRECT EXAMINATION OF EDWIN MEJIA]

[BY MS. GAVIN:]

Q Good morning, sir. Where are you from?

A Honduras.

Q When did you come to the U.S.?

A When?

Q When?

A 1997, September.

Q How old were you in 1997?

A I was 14 years old.

Q Who did you come to the U.S. with?

A My brother, Alex.

Q That's Alex Moreno?

A Yes.

Q Why did you come to the U.S.

A My parents brought us over here. They were already here.

Q Once you got here, did you go to school?

A Yes, I did.

Q Where did you go to school?

A It was New Brunswick, New Jersey, New Brunswick High School.

Q At the time that you came to the U.S. did you speak English?

A No, I didn't.

Q So you learned English once you got here?

A I'm still learning. Yes.

Q You use the last name of Mejia, correct?

A Yes.

Q Your brother uses the last name of Moreno?

A Mejia is my father's last name, and Moreno is my mother's. So when I became a citizen, I removed Moreno because it was too long.

Q When did you become a U.S. citizen?

A About two years ago, I believe. I can't remember very well.

Q After high school, did you get any further education?

A I didn't.

Q What kind of jobs have you held since you got out of high school?

A I worked for several companies when I was a minor. When I turned 18, I moved here to Baltimore and then I started working with a body shop in Laurel, actually. That's where I learned about cars and things like that.

Q Were you actually repairing cars in terms of the body or were you more running, doing office work?

A I was doing office work.

Q How long did you work for that company?

A I think I might have worked three or four years with them.

Q Then what did you do?

A Then I started at the body shop with my brother.

Q The Majestic Auto Body?

A Yes.

Q Why did you all start that business?

A It was a good opportunity. At the time, my brother was unemployed. I was still working with the company I was. I knew the system and everything, how to manage it, and Alex knew how to bring customers in, and things like that. So that's how we got it together and put it together.

Q Is Alex older than you, Alex Moreno?

A Yes, he is.

Q How much older is he than you?

A He's three years older.

Q So in connection with the running of the auto body shop, or Majestic, specifically what is it that you did?

A I was always doing the bookkeeping and answering the phone calls, dealing with customers, dealing with the employees, that type of work.

Q Did you keep track of the bank account for the company?

A Yes.

Q What kind of bank account did you all have for Majestic?

A It was a checking account through Bank of America.

Q Majestic itself, the company, what kind of company was it, do you recall, or is it? Is it a corporation or an LLC?

A LLC, and then we turned it into a corporation.

Q Who handled, did the banking? Was that you?

A It was me.

Q Now the money that would go into the bank account, the business bank account, where did that money come from?

A It came from the automotive repairs.

Q Would that be from the customers or from the insurance companies?

A The majority of it, it was from the insurance companies, and part of it was from the customers, walk-ins.

Q The insurance companies that you are talking about, just as examples, what insurance companies were sending money that would go into your bank account at Majestic?

A State Farm, Allstate, Nationwide, MAIF.

Q Progressive?

A Progressive.

Q How would the money get into the company bank account? Would it come by mail? What was the process?

A Some insurance companies, we have like direct deposit with them, such as State Farm and Liberty Mutual as well. They would put the money into the account and others, like the ones that we didn't have contracts with, they will give the customers to the shop — I mean the check to the shop or the clients. It depends.

Q Then would someone — would it be you that would deposit the checks or somebody from the company?

A The majority of the time it was me, and sometimes it was Alex.

Q In terms of the money that was in the bank account, what types of things would that money be used for?

A It was used for many things. It was used to actually buy parts, pay rent, bills, things like that, pay cops.

Q Okay.

A Pay customers as well.

Q When you say buy parts, where would you all get parts? These are parts to fix the automobiles?

A Yes, from the automotive parts, dealerships. It depends.

Q Did you ever make any purchases from auction houses and places like that for parts for cars?

A No.

Q Did you ever make purchases at any sort of car places, or wherever you go to get parts, is really what I'm asking.

A It was a dealership around in Yonkers too. Depending on how we needed to repair the car, we followed the estimate. The estimate would tell us what kind of parts the car need or what kind of parts the insurance was paying for, and we would follow the estimate.

Q Now you mentioned that you also used the money to pay police officers, correct?

A Correct.

Q Before we get to that, I want to show you what has been marked as Government's Exhibit 97 and ask you if you recognize that?

(Government's Exhibit Number 97 was received.)

A Yes.

Q What is Government's Exhibit 97?

A Excuse me?

Q What is it?

A It's my plea agreement.

Q You signed that plea agreement. If you would turn to page number, if you look in it — let me help you find the signature date.

Do you recognize — the plea agreement is dated June 2, 2011, correct?

A Correct.

Q Who is Ivan Bates?

A My lawyer.

Q So the letter is directed to him, correct?

A Correct.

Q Then looking at page ten, do you recognize your signature there?

A Yes.

Q That's dated June 20, 2011, correct?

A Correct.

Q Pursuant to this plea agreement, what is it that you have agreed to do?

A To tell the truth.

Q Have you agreed to testify, if requested?

A Yes.

Q Have you agreed to provide information to the government and respond to questions put to you?

A Yes.

Q Have any promises been made to you as to what will happen as a result of your cooperation under that plea agreement?

A No.

Q You pled guilty as a result of that pursuant to that plea agreement, correct?

A Yes.

Q You pled guilty to a charge of conspiracy, right?

A Yes.

Q And a charge of extortion under color of official right?

A I did.

Q Do you know who will sentence you at the end of your cooperation?

A The judge I guess, yes.

Q That's the same judge that's here in the courtroom, correct?

A Yes.

Q You don't know what the judge is going to decide, correct?

A I wish I knew. No, I don't know.

Q Now you mentioned that you used the money out of the Majestic bank account, that some of that money was used to pay police officers, correct?

A Correct.

Q What were you paying police officers for?

A Bringing cars to the shop.

Q Do you recall how this started?

A I have a slight memory about it. I wasn't the one directly dealing with it, but it was through Corona. That was the first cop I saw in the shop talking to my brother.

Q So who was dealing more directly with it than you?

A Hernan, Alex.

Q Your brother was?

A My brother was, yes.

Q How were the payments made to the police officers to refer cars to the shop?

A At some point at the beginning, because it was so small, they started doing checks. Then they turned it into cash amounts at the end.

Q How would you account for the cash payments and the checks that were being issued to police officers in the books of the company?

A I tried to hide it. I tried to hide it.

Q How would you try to hide it?

A Just putting it as referral of parts.

Q And you knew that wasn't true?

A Right.

Q And why were you trying to hide it?

A Because we knew that we were doing wrong. Now you had a cell phone that you used; is that correct?

A Yes.

Q What was your cell phone number?

A It's XXX-XXX-4907.

Q Did you have that cell phone number during the whole time that you knew that you all were paying the cops?

A Yes.

Q Now what was Mario's Towing?

A A tow truck company.

Q Whose tow truck company was it?

A Ours.

Q Did there come a time that you all used tow receipts from that company —

A Yes.

Q — in connection with cars being referred by police officers?

A Yes.

Q How would you use those tow receipts?

A When we towed a car, we were like writing fake, I would say, bills to insurance companies. Like we would put different amounts to kind of cover the expenses for the police.

Q Are you saying that sometimes you all would use a tow receipt to jump up the cost of the towing?

A Correct.

Q Is that when somebody else would tow the car, not Mario's?

A Correct.

Q Who else would tow cars?

A Rene Towing.

Q Is that Rene Hernandez?

A Yes.

Q Known as Ramirez Towing?

A Ramirez, that's correct. I'm sorry.

Q Using a different last name, Hernandez or Ramirez, is it the same thing as you have described with Moreno and Mejia?

A I think it's Ramirez on the tow truck.

Q Were there occasions — did you ever use the Mario's tow receipts to prepare a tow bill when the car was actually driven to Majestic?

A Can you repeat that question one more time.

Q Were there ever any occasions upon which you or someone at Majestic prepared a tow receipt, using the Mario's tow receipt, when the car was actually driven to Majestic, it was not towed?

A Yes.

Q Why would you do that?

A Because we needed to — it depends. There were several occasions where they needed to prove to the insurance company that a car was actually damaged

before it got to the shop. By writing a towing bill, we were telling the insurance company that the car was actually damaged before getting to the shop.

Q If you wrote a tow bill, would you all get paid from the insurance company for the tow, even though it didn't actually happen?

A Yes.

Q Let me show you what has been marked as Government's Exhibit 113 and ask you if you recognize that booklet?

A Yes.

Q What is that, please?

A It is Mario's Towing, the receipt book.

Q Was that one of the books that was at Majestic that you all would use to create receipts?

A Yes.

Q Let me show you what has been marked as Government's Exhibit 33. Do you recognize that?

(Government's Exhibit Number 33 was received.)

A I do.

Q What is that, please?

A It's a towing bill.

Q Whose handwriting is that?

A Mine.

Q Now the towing bill here is dated, if you look up at the top, May 1, 2010. Correct?

A Correct.

Q Do you remember how you came to write this tow bill?

A Yes.

Q Could you describe that, please?

A It was a situation where the vehicle was at the shop for several time — for sometime actually. They didn't know how to actually get the insurance to approve the damages.

Then I heard a conversation, Alex and somebody else — I can't remember who it was at the time — talking on the phone saying that they needed to create a bill and a report to actually submit it to the insurance companying, saying that the car was actually damaged on this date that my brother was giving me to actually write this invoice.

Q So what then happened? Did you get some instructions from your brother?

A Yes. Alex told me the time and the date, and everything. Then I went to the car and got the information from the vehicle and everything.

Q Do you recall the vehicle?

A Yes.

Q What kind of car was it?

A It was a Chrysler.

Q Did you know the owner's name at anytime?

A No.

Q So the date that is on there, May 1, 2010, as the date of tow, is that false?

A This date?

Q Yes.

A Yes.

Q Was the date sometime later that the car actually arrived at Majestic?

A It was already at Majestic.

Q When you wrote this tow bill?

A Yes.

Q And you backdated it; is that right?

A Exactly, yes, yes.

Q Now directing your attention to December of 2010, did there come a time that your brother went to Honduras to watch a soccer game?

A Yes.

Q Do you recall whether or not you were working at Majestic during the time period that he was in Honduras?

A Yes.

Q While he was in Honduras, what job duties were you doing at Majestic?

A I was running the shop, and I was answering police calls when there were accidents.

Q When you say answering police calls when there were accidents what do you mean?

A Police would call me and tell me that there were accidents that we need to go to, or clients, that we

need to go to their houses and visit them and talk to them about getting their cars repaired.

Q Do you know Kelvin Manrich?

A Yes.

Q Did you have any contact with him during this time period?

A Yes.

Q I'm going to show you what has been marked as Government's Exhibit 77, which is titled Contacts Between Edwin Mejia and Kelvin Manrich. Do you recognize your phone number on there as a phone number either calling or being called in the time period of September 2, 2010 to February 8, 2011?

A Yes.

Q Do you recall having contact with Officer Manrich during the December time period as reflected on Government's Exhibit 77?

A Yes.

Q So if you look on December 10, 2010, a telephone call, is that between you and Officer Manrich, at 5:05 p.m.? Do you see that?

A Yes.

Q Do you recall, subsequent to speaking to — Do you remember what you talked to Officer Manrich about at that time?

A If I remember now?

Q Uh-huh.

A I don't think so.

Q Did you ever talk to him about anything other than cars that he was attempting to refer to Majestic?

A No.

Q So if you spoke to him, it was about that; is that correct?

A Correct.

Q Now do you recall several days later speaking to your brother by telephone about Officer Manrich and cars, and a Lexus? Do you recall that conversation?

A Yes.

MS. GAVIN: If we could play the beginning of Government's Exhibit 91H for the jury. It should be the December 10 to December 15 tab in the transcripts.

MR. MARR: December 10?

MS. GAVIN: Yes, 10 to 15.

MR. MARR: The exhibit number again, please?

MS. GAVIN: It is 91-H.

Sir, we are just going to play the beginning of it so you can hear the voices.

(The audio was played.)

BY MS. GAVIN:

Q Do you recognize the voices on that call?

A Yes.

Q Who is on the call?

A It's my brother and I.

Q Do you remember speaking to him in that conversation about Officer Manrich contacting you or trying to contact you about a Lexus that he wanted to come to Majestic?

A Yes.

Q Do you recall whether that Lexus that you were speaking of eventually did come to the shop?

A Yes.

Q Now I want to direct your attention now to Government's Exhibit 115 and ask you if you recognize Government's Exhibit 115?

(Government's Exhibit Number 115 was received.)

A Yes.

Q What is that, please?

A This is a letter that our accountant wrote to us to actually organize all of our numbers because he was telling me that there was the amount of $202,000 that we had as a profit in our account, but it wasn't in our account actually.

Q So this is from May of 2010, relating to the tax year 2009; is that correct?

A Correct.

Q That's your signature down at the bottom on the first page, dated June 2010?

A Yes, ma'am.

Q Did you indicate to your accountant that the expenses included payments to police officers?

A If I told my accountant?

Q Yes.

A No.

Q Did you indicate to your accountant ever that you were paying cash to the police officers to send cars to Majestic?

A No, I didn't.

Q Did so then in terms of the cash payments, are they reflected in various categories within the books and records?

A Yes.

Q As you testified earlier, they were hidden in some way under different categories?

A Correct. All the categories have a little bit of amounts in those expense, but the majority is in the advertising and promotion.

Q I'm going to direct your attention now to February 2, 2011.

MS. GAVIN: Ms. Wicker, if we could play the beginning of Government's Exhibit 91KK. This is in the tab of February 2nd.

THE COURT: I'm sorry, which tab?

MS. GAVIN: One minute, Your Honor. I'm trying to make sure that I've got it right, 1-30 to 2-2. I'm sorry, Your Honor, 91KK.

MR. MARR: What date is it, please?

MS. GAVIN: It's session 14377.

(The audio was played.)

BY MS. GAVIN:

Q Do you recognize the voices on that call?

A Yes.

Q Who is on that?

A It's Alex and I.

Q Mr. Mejia, what I would like you to do, if you can look at, if you can look on the screen there, what I would like you to do is — EM, do you see for you?

A Yes.

Q I would like you to read your part, and Ms. Kelly can read your brother's part. Okay? So you'll start. Are you able to read it? Is it big enough.

A Yes. I can see it.

Q Go ahead.

EM: What the hell do you want?

AM: Are you still at the bank?

EM: No, dude, I'm here at my mom's eating.

AM: Did you go to the bank today?

EM: I'm going over there.

AM: I need to withdraw some money, man.

EM: How much?

AM: Nine.

EM: All right, I'll bring it.

AM: But this guy is here waiting.

EM: Have him wait then. I'm on my way.

AM: The Hindu.

EM: Huh?

AM: I said the Hindu is here.

EM: I know. He called me already. Have him wait. I'm on my way over there.

AM: All right.

BY MS. GAVIN:

Q What were and your brother talking about?

A He was calling me to tell me to get some cash out of the bank to actually pay Kelvin Manrich.

* * *

[138–143]

[DIRECT EXAMINATION OF SHANNON SEADERS]

BY MS. GAVIN:

Q Good afternoon, Ms. Seaders.

A Good afternoon.

Q How are you employed?

A I am employed with the State of Maryland, with the Department of Labor, Licensing and Regulation.

Q What do you do for that agency?

A I take unemployment claims. I take statements as to why people are separated from their jobs, and I make decisions on whether or not they are eligible for benefits.

THE COURT: If you could speak just a little more slowly.

(Laughter.)

Q How long have you been in that position?

A I have worked there for three years.

Q Do you have a particular job title?

A I am a claims specialist.

Q Where are you located?

A I am located in Cumberland, Maryland.

Q So how do you take people's claims?

A Well, basically they call in and file a claim from wherever they have been separated. Then I do the adjudication of that claim, which I interview them. They receive an appointment notice. I interview them to see what the details are regarding their separation. Then we decide on whether or not they are eligible to receive unemployment insurance.

Q The interview and the claims, receiving the claim, is that all done by telephone?

A It is, yes.

Q I'm going to show you what has been marked as Government's Exhibit 93A. It is also going to show up on your screen. Do you recognize that?

(Government's Exhibit Number 93A
was marked for identification.)

A Yes.

Q What is that?

A This is the fact-finding interview that I had in regard to Kelvin Manrich.

Q What date is reflected on this report that you had the interview?

A The interview was held on March 14, 2011.

Q Was this by telephone?

A This was by telephone, yes.

Q Do you always do a fact-finding report that looks like this when you are taking claims?

A Yes.

Q What is your process for the section on the first page? It's entitled Claimant Fact-Finding Statement. How is that prepared?

A Well, what happens is over the phone we interview the claimant, and we ask specific questions as regard to their last day of work was, what the details are as to why they are no longer working there.

We take notes. Then we prepare the statement, and then basically we destroy the notes right after that.

Q Is that your standard practice and procedure at work?

A Yes, uh-huh.

Q Just to be clear, you're saying we, but are you talking about how you do it?

A Yes.

Q And how your co-workers as far as your know do it?

A Right.

Q Looking at the Claimant Fact-Finding Statement, it is written in the first person, meaning using the words I and my. Are you taking it down verbatim what the person, in this case, Mr. Manrich, said to you on the telephone?

A Right. We do it in the first person because it is the statement that they made to ups. So this is the statement that he made to me. It's a summary of everything, but it's all the information that he gave to me.

Q Are you quoting Mr. Manrich word for word?

A It's not quoting word for word. No.

Q Is it in substance what he said to you?

A Right, yes.

Q So looking at the fact-finding statement, could you read the second paragraph that starts with on 2-28-2011?

A Sure. On 2-28-2011, I was placed on unpaid suspension due to the my involvement in a conspiracy. I have a friend who owns Majestic Auto Body, LLC. Whenever I would be on the scene of an accident, I would advise the people involved to call Majestic to tow them and do their auto repair work for them. I received financial gifts from Majestic Auto Body in exchange for sending customers their way. I would sometimes just call Majestic myself and have them come to the scene of the accident before I gave the customer the choice of who they wanted to call.

Q Then could you read the next two paragraphs?

A Sure. As a police officer —

Q Actually, right above there, there is a one sentence paragraph.

A I had no prior warnings.

Q Okay.

A As a police officer, I am not supposed to send tow business to private companies. The people involved in the accident are supposed to call for their own tow, or if they refuse, I am supposed to call a tow truck under contract with the City of Baltimore. Majestic Auto Body was not under contract with the City of Baltimore.

Q Could you read the next paragraph?

A I was friends with the owners of Majestic and I accepted money and gifts from them in exchange for sending them business. I was involved in the conspiracy and accepted kickbacks as a result. It is grounds for immediate termination for a police officer to be involved in a conspiracy.

Q Now this statement as you provided it on this report, do you recall whether or not Mr. Manrich indicated to you whether this was, these statements, this is what he was charged with or what he had done?

A He told it to me that this is what he had done. He did not say it is what he was fired for exactly. He basically just told me this is what happened, and this why he was on a suspension.

MS. GAVIN: Nothing further, Your Honor.

* * * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

v. **CRIMINAL No. CCB-11-0122**

SAMUEL OCASIO, et al.

Defendants.

JURY TRIAL DAY 5

Before: The Honorable Catherine C. Blake
United States District Judge

Baltimore, Maryland

February 22, 2012

* * *

[124–130]

[DIRECT EXAMINATION OF
ROBERT E. GUYNN]

[BY MS KELLY:]

Q Now I am going to turn your attention to the questions and the answers from that day with Mr. Manrich.

About how long did the interview of Mr. Manrich last?

A Probably an hour, an hour and a half.

Q Was Mr. Manrich handcuffed?

A I can't recall. If he was handcuffed, it would have been in the front.

Q Did Mr. Manrich tell you whether or not he knew somebody by the name of Alex Moreno?

A Yes, he said he knew Alex Moreno.

Q Did he say how it was that he came to meet Mr. Moreno?

A He said that officer, Baltimore City Officer Osvaldo Valentine had introduced Mr. Manrich to Alex Moreno at an accident scene.

Q And did he say anything about what Mr. Valentine said about the relationship between Alex and Officer Valentine.

A He said that Valentine told him Moreno, if he sent cars to Moreno, that Moreno would pay him for the cars from the accident scenes.

Q Did he tell you the amount that Officer Valentine said that Mr. Moreno would pay Officer Valentine?

A He did give me the amount, but I can't recall the exact dollar amount.

Q Did Mr. Manrich say whether or not he knew Alex's brother, Edwin Mejia?

A Yes. He said he knew Edwin.

Q Did you ask Mr. Manrich whether he had in fact referred vehicles to Majestic?

A Yes.

Q And what was his answer?

A He admitted that he did refer vehicles to Majestic.

Q And did he tell you when it that he started referring cars to Majestic?

A I believe it was in February 2010.

Q Did he tell you approximately how much money he had made from February 2010 to then for referring cars to Majestic?

A Approximately $5,000.

Q That's the number he told you?

A Yes.

THE COURT: Let me know when you get to a good breaking point.

MS. KELLY: This is probably actually a good point, Your Honor.

THE COURT: Thank you, ladies and gentlemen. Again, please go have lunch. Don't talk about the case. I will see you at, let's say, 2:05 back here. Let's let the jury go.

MS. KELLY: Absolutely. I apologize.

(The jury was excused.)

THE COURT: You can step down.

MS. KELLY: Your Honor, I wanted to clarify, Special Agent Guynn, it is okay that I continue to talk to him about the case over the lunch break, that there is no concern with that?

THE COURT: So long as you don't discuss with him the testimony that he has already given.

MS. KELLY: I understand completely, Your Honor.

THE COURT: Other than that, there is no reason you can't talk to him about the case. That's my understanding.

MS. KELLY: About where the testimony is going.

THE COURT: Where the testimony is about to go, right. As long as you don't talk about what he already testified to.

MS. KELLY: I understand, Your Honor. Thank you very much.

THE COURT: Do you have any witness after the special agent?

MS. KELLY: No. There may be one potentially, but it would be extremely short. I suspect we will finish after lunch.

MR. CROWE: Could we ask who that might be?

MS. GAVIN: We are not sure yet. I will tell you as soon as we know.

THE COURT: Okay. I will see you after lunch.

(A lunch recess was taken.)

AFTERNOON SESSION

THE COURT: Ready for the jury?

MS. KELLY: Yes, Your Honor. Thank you.

(The jury entered the courtroom.)

THE COURT: You can be seated.

All right. If you would like to continue.

MS. KELLY: Thank you.

BY MS. KELLY:

Q Special Agent Guynn, prior to the lunch break we were talking about an interview that you did of Mr. Manrich. Do you recall that?

A Yes.

Q Now I think the last thing you testified to was about $5,000 is the amount; is that right?

A Correct.

Q Did Mr. Manrich tell you how it was that he would typically be paid by Mr. Moreno?

A Yes. He said that Mr. Moreno would always pay him in cash, and that they would usually drive to the Bank of America over by I think Golden Ring, or the Royal Farms Store nearby.

Q Did Mr. Manrich tell you how it was that he would get in contact with Alex Moreno?

A Yes. He said he would call him using his cellular telephone.

Q Did he say where he called him from?

A The accident scene.

Q Did he give you any details about what he would do at the accident scenes?

A Yes. He said he would give the accident victims three options. He would allow them to use a private tow company such as AAA, or he would have the City tow company tow their car to the City Yard, or the third option would be he would call Mr. Moreno to come and tow their vehicle to Majestic.

Q Did Mr. Manrich indicate one way or the other about whether he understood this to violate Baltimore Police Department General Orders?

A Yes. He said that he understood that it was violating the Baltimore City General Orders, that he should have used a Medallion tow company, a contracted tow company to tow the vehicles, and he added that he knew it was illegal for accepting the money for sending the cars to Alex Moreno.

Q At some point during the interview did you show Mr. Manrich photos and ask him about them?

A Yes.

Q I'm going to show you Government's Exhibit 109. It will come up on your screen. Do you see what's on your screen?

(Government's Exhibit Number 109 was received.)

A Yes.

Q We'll just try to make it a little bit bigger here. Is this one of the photographs that you showed Mr. Manrich?

A Yes.

Q If you could describe to the jury, did you show him this sheet exactly how it is, or did you cover up any portion of it?

A No. I covered up everything below the photo, like with the details, the camera name, and the captured time, that sort of thing, and just showed him a photo of the vehicle in front of Majestic.

* * *

[164–168]

[CROSS-EXAMINATION OF
ROBERT E. GUYNN]

[BY MR. CROWE:]

Q I'm going to happened you what will be marked again for identification as Defendant Ocasio Exhibit 8, and I'm just looking for a fairly quick answer on this.

What I have done is I have labeled the reports A through N. Does it appear that Mr. Moreno was interviewed mostly in person on two occasions by telephone by you, by you and Mr. Smith, sometimes in the company of one or both of the Assistant United States Attorneys approximately 14 times?

(Defendant Ocasio's Exhibit Number 8
was marked for identification.)

A That sounds about right.

Q If that sounds about right, that's good enough. We don't need to take the jury's time with that.

Now did Mr. Moreno tell the FBI that Mr. Ocasio had recruited two police officers to join in the scheme?

A Yes.

Q What were the names of those two police officers?

A Andre Hibler and Victor Reillo.

Q He told that to the FBI on at least two or three occasions, did he not?

A I know he told them on at least one occasion that he thought they Samuel Ocasio recruited Victor Reillo and Andre Hibler.

Q If you would perhaps look at the report that you prepared for the March 21 initial interview.

A Yes.

Q On page 147, do you see that he reported that, do you see that he reported that on that occasion?

A Yes.

Q If you would look at the report that I believe that I have labeled number E. I can't read my writing. It's either 135 or 139. Let me check. It would be 139.

Do you see that he again stated that Mr. Ocasio had recruited those two officers, Reillo and Hibler to participate in the scheme?

A Yes.

Q There has been testimony about Mr. Reillo in this case. Do you recall that, Officer Reillo?

A Yes.

Q He was the officer whose car was I think in a one car accident that got towed from the Southwest District in Baltimore City?

A Correct.

Q Do you recall what Mr. Moreno said about Mr. Hibler when I asked if he had ever, if Mr. Ocasio had recruited Mr. Hibler?

A Mr. Moreno said he didn't know Mr. Hibler, I think is what he said.

Q He said he didn't know who Mr. Hibler was, but he certainly gave you the name of Andre Hibler in two interviews, did he not?

A Right.

Q Similarly, did Mr. Ocasio tell the Bureau on at least two occasions, without equivocation, that the person who had recruited Mr. Ocasio and brought him into this scheme was the Officer Leonel Rodriguez?

A Yes. Two occasions he said that, and the third occasion I think he clarified that he thought it was Rodriguez because him and Ocasio had been in contact with a lot.

Q Was that third occasion prompted by an indication from you or somebody in the U.S. Attorney's Office and the law enforcement that hey, Rodriguez said —

MS. KELLY: Objection, Your Honor. He's indicating what Rodriguez said, and I would rather the question not get out before what Rodriguez said.

THE COURT: That's not the way I heard it, but why don't you come up to the bench.

(Counsel approached the bench
and the following ensued.)

THE COURT: What was your question, Mr. Crowe?

MR. CROWE: The question was essentially did Mr. Moreno change his mind after he was told that Rodriguez said that he had not recruited, that he had not recruited —

MS. GAVIN: They can hear.

THE COURT: I'm sorry?

MS. GAVIN: I thought they were saying they could hear.

THE COURT: Hold on a second.

MS. GAVIN: The jury is talking. I thought they were saying they could hear.

THE COURT: I'm sorry.

MR. CROWE: The question was did Moreno say that he was not sure that it was Rodriguez after he was told that Rodriguez said I didn't do it?

THE COURT: Told by the government? I don't see anything wrong with the question.

MS. KELLY: I think it's a back door to get in hearsay from Rodriguez.

THE COURT: I think it's a way to suggest that he is tailoring his testimony to what the government wants him to say.

(Counsel returned to the trial tables.)

* * *

[170–175]

THE COURT: Okay. So again, subject to, of course, checking exhibits, the government's case is done?

MS. KELLY: Yes, Your Honor.

THE COURT: Defense have any motions?

MR. MARR: Your Honor, the Court please, on behalf of the defendant, Kelvin Manrich, I move for a judgment of acquittal, and I place that on the record. I have no further argument.

THE COURT: All right. Thank you.

Mr. Crowe.

MR. CROWE: Your Honor, on behalf of my client, I also make a motion for judgment of acquittal, both on the conspiracy count and all of the substantive counts. I think even taking all inferences in favor of the government, the government still has not made out a prima facie case.

With respect to the conspiracy count, in particular, we have raised the issue in the *Brock* case.

The *Brock* case has that certainly a conspiracy to commit a 1951(a) violation has to be something indicating that money came from another.

The indictment in this case charges that the proceeds from the conspiracy were extracted from three people. That is Moreno, Mejia, and Majestic.

I think the fact that the indictment has the two individuals, as well as the company, which was solely a creature, is enough to distinguish it from other cases which do not agree with *Brock*.

I'm sure the Court has also read the Fourth Circuit's opinion in *Medford*, which kind of ducks the issue, because the indictment did not say that the source of the money was part of the conspiracy. It had not been raised below. Therefore, based on plain error —

THE COURT: I'm sorry. I'm having a little trouble hearing you.

MR. CROWE: Based on the plain error analysis, that it wasn't going to look any further in the question. So there's clearly no Fourth Circuit law on that.

Although the argument is a little more strained as to a substantive count, we believe that for a 1951(a) conviction, it also has to be money which was extracted from somebody, you know, from somebody else who is not part of the conspiracy.

In that context, I would point out that the indictment is a little bit peculiar, in that it charges, my recollection is that in all the substantive counts, it charges that the money was extorted from Moreno, not from Moreno or Mejia or Majestic, but simply from Moreno. Mr. Moreno was clearly part of the conspiracy.

THE CLERK: Excuse me.

(Pause.)

THE COURT: All right. You may continue.

MR. CROWE: One final point is that Count 7 I believe is the count which deals with the car that involved Latitia Neal. I don't see any interstate commerce there. The car was simply towed to Majestic. The car was deemed total. There was nothing done with the car other than to give it back.

You almost have to go to a case like *Wickard versus Filburn* to find there is so little interstate commerce. Thank you, Your Honor.

THE COURT: All right. Thank you.

Would the government like to respond?

MS. GAVIN: Yes, Your Honor. The government would refer obviously the Court to the argument made in the motion in limine at the beginning of this case with respect to the *Brock* decision and why that case has not been followed in this circuit, or I believe anywhere else, and that it is simply not applicable in this district to this case.

I would also point out that with respect to the substantive counts, the defendants are each charged also with aiding and abetting, which I think also certainly, under the *Evans* case, makes it very clear that an individual can be charged in this way. The payor can also be charged with the substantive count of extortion here under both the direct and aiding and abetting in the substantive counts.

So we would refer the Court to that, as well as the arguments made in the motion in limine.

THE COURT: All right. Thank you.

Well, I do appreciate that the issue was raised in advance in limine, so I have looked at the cases. I think certainly as to the substantive counts, even if one otherwise agreed with the reasoning in *Brock*, it is hard to extend that to the substantive counts, particularly in light of the Supreme Court's holding in *Evans versus United States*.

The Fourth Circuit did have a chance to rule on this recently, but found it not necessary in the *Medford* case because there were other people or other entities at least not charged in the conspiracy from which money had been taken. So we don't have a recent decision of the Fourth Circuit.

We do have Judge Bennett's opinion in the *Curry* case and a case from the District of Alaska, and an older Fourth Circuit case, that all would appear to reject the argument or the decision in *Brock*.

I think we also do have in this case something very similar to the earlier — I think it's the *Spitler* case — the earlier Fourth Circuit case which was discussed in *Brock*, and it found distinguishable because in that case, there was a company which was actually the source of the payment. Even though it was a similar situation I think to this, where it was a high level agent or employee of the company that was taking the company money and using it to make the payments, the Sixth Circuit in *Brock*, therefore, found that to distinguish the *Spitler* case. I think that's very similar to what we have here.

Regarding Count 7, the interstate commerce, the effect on interstate commerce, of course, that has to be shown as minimal. I do believe there is sufficient evidence in the case for the jury to find that that fairly low threshold has been met, if they choose to do so.

So at this point, I am denying the motions for judgment on all counts.

In terms of proceeding from here, we can take a short break.

* * * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

v.

SAMUEL OCASIO, et al.
Defendants.

CRIMINAL No. CCB-11-0122

JURY TRIAL DAY 6

Before: The Honorable Catherine C. Blake
United States District Judge

Baltimore, Maryland

February 23 2012

* * *

[23–29]

[DIRECT EXAMINATION OF JAVIER CONDE]

BY MR. CROWE:

Q Officer Conde, I understand that you are an officer with the Baltimore City Police Department; is that correct?

A Yes, sir.

Q How long have you been with the department?

A For five years.

Q After graduating from the academy, have you had a single assignment?

A Yes, sir. I have been assigned to the Central District, located on the 400 block of East Baltimore street.

Q That's within a fairly easy walking distance of this courthouse; is that correct?

A Like ten blocks.

Q That's essentially the downtown area; is that correct?

A Yes, sir.

Q Where were you employed before you became a member of the Baltimore City Police Department?

A I was a police officer in the Puerto Rico Police Department.

Q Is the Puerto Rico Police Department a police department which essentially covers the entire Commonwealth of Puerto Rico?

A Yes, sir.

Q So it would be comparable to a state police department; is that right?

A Yes, sir.

Q What rank did you have in that department?

A The moment I resigned, before I came to Baltimore, I was a lieutenant.

Q Do you know my client, Samuel Ocasio?

A Yes, sir.

Q How did you come to meet Mr. Ocasio?

A First I met Ocasio in Puerto Rico. When Baltimore went to recruit officers, we find a person to help us with the English language. That's where I met him. We were taking English classes together.

Q Did you understand that you both were taking English classes because you wanted to qualify to come to the United States and work on the Baltimore City Police Department?

A Yes, sir.

Q What has been the nature of your relationship with Mr. Ocasio in the United States?

A Since I met him, we came here, we become friend. At this moment, he is my kid godfather.

Q Do you and your family do things together?

A Yes, sir.

Q Now have you had the opportunity to interact and work him directly as a police officer?

A No. We work in different places, different assignments.

Q Have you had the opportunity to interact with him outside the police department?

A Yes. We are members of the same church.

Q Do you also know other people who know Mr. Ocasio?

A Yes, sir.

Q Could you tell us what different types of groups of people those would be?

MS. GAVIN: Objection, Your Honor.

THE COURT: Do you want to come up and tell me where it's going?

(Counsel approached the bench and the following ensued.)

MR. CROWE: I don't understand the objection.

THE COURT: You want to start with that?

MS. GAVIN: Your Honor, I think it is getting way beyond the scope of the rule. I mean he has established he knows him, he knows him in the community. I assume the next question will be what's your opinion as to his representation or are you aware of it? But to just start going into who the other people are that might know him, and how they know him, I think is going way beyond that.

MR. CROWE: Well, I have to establish the communities.

THE COURT: He is going to be one of the character witnesses?

MR. CROWE: Yes.

THE COURT: What kind of answer are you expecting?

MR. CROWE: He is saying he knows him through the church and other Hispanic people in Harford County. He also knows him through other police officers. He knows other police officers, some of whom are members of the church and some of whom are not.

THE COURT: Okay. Fine. Thank you.

(Counsel returned to the trial tables.)

BY MR. CROWE:

Q What groups of people do you know who know Mr. Ocasio?

A Most of the people I know are members of the church, that attend the church, different professions, including other police officer.

Q So there are police officers within the church; is that correct?

A Yes, sir.

Q Including members of the Baltimore City Police Department?

A Yes, sir.

Q Do you also know officers who know Mr. Ocasio outside the church?

A Yes, sir.

Q Could you give us the name of the church? I should have asked that to begin with.

MS. GAVIN: Objection, Your Honor.

THE COURT: Overruled.

A The name of the church, it is Spanish, Sendero de la Cruz.

Q Does that mean Way of the Cross?

A Yes, sir.

Q Are you familiar with Mr. Ocasio's representation among church members, both those who are and are not associated with law enforcement?

A Yes, sir.

Q Are you familiar with his reputation among law enforcement officers, both those who are members of the church and those who are not?

A Yes, sir.

Q Among the church members, what is Mr. Ocasio's reputation for being an honest person?

A All the members see him as an honest person, and they have a lot of respect for him.

Q What's his reputation for obeying the law, if you know?

A I never heard anything bad about him in terms of violation of the law by other members.

Q Among the law enforcement officers that you know, what is his reputation for being a police officer who acts in a lawful manner?

A To my knowledge, he was a good officer who was doing his job according to the rules.

Q That's his reputation; is that correct?

A Yes, sir.

Q Now the questions so far have dealt with your knowledge of his reputation among these two groups. Are those your opinions as well?

A In my opinion, I never heard before any type of incident involving him or any type of violation.

Q Well, do you have an opinion as to whether or not he would betray his office as a Baltimore City police officer for money?

MS. GAVIN: Objection, Your Honor.

THE COURT: Sustained.

Q What is your opinion as to his integrity?

A In my opinion, his integrity, he's a good person, and honest.

MR. CROWE: Thank you.

MS. GAVIN: No questions, Your Honor.

THE COURT: Thank you very much, sir. You're excused.

* * *

[35–36]

[DIRECT EXAMINATION OF
JAVIER CONDE]

[BY MR. CROWE:]

Q Had you had the opportunity to work with Mr. Ocasio during the time he was a police officer?

A No.

Q Is that because you were in different districts?

A Yes.

Q But do you know others who know Mr. Ocasio?

A Oh, yes, sir.

Q What type of people are these that you know who know Mr. Ocasio?

A Well, besides officers? Members of the church, pastor, my wife, quite a number of people. We all go to visit other churches, so related to them.

Q So there are law enforcement officers who are members of the church. This is up in Harford County; is that right?

A Yes, sir.

Q Are you familiar with Mr. Ocasio's reputation both in the Harford County Hispanic community, the church?

A Yes.

Q And among the smaller group of Baltimore Police Department officers who are members of the church?

A Yes.

Q What is his reputation generally among church members for being honest?

A Well, if you put it on a scale from one to ten, ten being, you know, perfect, I would say ten.

Q What is his reputation for being a law-abiding person?

A Good.

Q What is his reputation among police officers who are members of the congregation for being an honest person?

A He is outstanding on that.

Q I'm sorry. Did you say outstanding?

A Yeah, I did.

Q What is his reputation among them for being a law-abiding police officer?

A It's good.

Q What we have been talking about, and this is a legal distinction, is his reputation among other people.

A Uh-huh.

Q You told us what his reputation is among other people.

A Uh-huh.

Q Are those your opinions as well?

A Yes. So far he's a great person.

MR. CROWE: Thank you very much.

THE WITNESS: You're welcome.

* * *

[43–45]

[DIRECT EXAMINATION OF
WILSON SOTO]

BY MR. CROWE:

Q Perhaps I can ask this question. Can you tell the members, can you tell Judge Blake and the members of the jury about how much time per week Mr. Ocasio spends preparing for leading the youth activities?

MS. GAVIN: Your Honor, I'm going to object.

THE COURT: I'm going to sustain that. If it's time that he spends with this gentleman that you want to bring out, that's one thing.

Q Well, have you had the opportunity to interact with Mr. Ocasio directly?

A Yes, sir.

Q Have you had the opportunity to interact with him directly in his activities as a youth counselor?

A Yes, sir.

Q Do you know other people who know Mr. Ocasio?

A Yes, sir.

Q Are those members, are those largely members of the church?

A Yes, sir.

Q Without giving any specific names, can you tell us the numbers of the members of church who are either past or present law enforcement officers?

A Well, we have about seven or six families approximately that are police families.

Q Are you familiar with Mr. Ocasio's reputation both among the general members of the church and the smaller set of members who are associated with law enforcement?

A Yes, sir.

Q What is Mr. Ocasio's reputation both among the church members and the smaller group of law enforcement officers, assuming that it is the same for being an honest and law-abiding person?

A Well, from the time I have known Mr. Ocasio, he has always been a person that respects others. He is very cordial, respectful. He is a happy person that brings harmony and also harmony to the group, and he is a family person.

Q So would you say that his reputation for being honest and law-abiding is good?

A Yes, sir.

Q We technically have been talking about your knowledge of his reputation. Do you share — in your opinion, is that reputation well-deserved?

A Yes, sir.

* * *

[46]

THE COURT: Okay. Then we are at the conclusion of all the evidence in the case.

Mr. Crowe, I assume you are renewing your motion?

MR. CROWE: We renew the motion for judgment of acquittal on the grounds previously stated.

THE COURT: All right. For the same reasons as previously stated, I am denying your motions. I am specifically rejecting the *Brock* argument in the context of this case. I think there is sufficient evidence as to all the elements of the four offenses to go forward to the jury.

* * *

[67–72]

[THE COURT:]

Now the defendant is charged in Count 1 with conspiracy to violate federal law. The relevant statute, the law on this subject is called, it's referenced to the Code, 18 U.S.C., Section 371. The Code provides that if two or more persons conspire, which is essentially agree, to commit any offense against the United States, and one or more of such

persons does any act to effect, to carry out the object of the conspiracy, each is guilty of an offense against the United States.

Now to satisfy its burden of proof on Count 1, the conspiracy charge, the government has to establish each of the following four essential elements beyond a reasonable doubt:

First, that two or more persons entered the unlawful agreement that is charged in the indictment, starting in or about the spring of 2008, and this is the agreement to commit extortion under color of official right.

Second, that the defendant, Mr. Ocasio, knowingly and willfully became a member of that conspiracy.

Third, that one of the members of the conspiracy knowingly committed at least one of the overt acts charged in the indictment; and fourth, that the overt act, which you find to have been committed, was done to further some objective of the conspiracy.

I'm going to define those more thoroughly.

First of all, a person acts knowingly if he acts intentionally and voluntarily, not because of ignorance, mistake, accident or carelessness. Whether the defendant acted knowingly may be proven by his conduct and by all the facts and circumstances surrounding the case.

To act willfully means to act with knowledge that one's conduct is unlawful and with the intent to do something the law forbids, that is to say, with a bad purpose to disobey or disregard the law. Again, a

defendant's conduct is not willful if it's due to negligence or inadvertence or mistake.

So the first element the government must prove beyond a reasonable doubt to establish the offense of conspiracy is that two or more persons entered the unlawful agreement charged in the indictment.

In order for the government to satisfy this element, you don't have to find that the alleged members of the conspiracy met together and entered into any express or formal agreement. You don't have to find that the alleged conspirators stated in words or writing what the scheme was, its object or purpose, or every precise detail of the scheme, or the means by which its object or purpose was to be accomplished. But the government must prove that there was a mutual understanding, whether spoken or unspoken, between two or more people to cooperate with each other to accomplish an unlawful act.

Now you may find that the existence of an agreement to disobey or disregard the law has been established by direct proof. However, because conspiracy by its very nature is characterized by secrecy, you may also infer, you may conclude that it exists based on the circumstances of the case and the conduct of the parties involved.

In a real, real sense then, in the context of conspiracy cases, actions often speak louder than words. In this regard, you may, in deciding whether an agreement existed here, consider the actions and statements of all those people you find to be participants in the conspiracy as proof that a

common design existed on the part of the persons charged to act together to accomplish an unlawful purpose.

Now the second element the government has to prove beyond a reasonable doubt is that the defendant, Mr. Ocasio, knowingly, willfully, and voluntarily became a member of the conspiracy. So if you are satisfied that the conspiracy, the unlawful agreement charged in the indictment, existed, you must next ask yourselves who the members of the conspiracy were.

In deciding whether the defendant, Mr. Ocasio, was in fact a member of the conspiracy, you should consider whether he knowingly and willfully joined it. Did he participate in it with knowledge of its unlawful purpose and with the specific intention of furthering its business or objective as an associate or a worker?

It is sometime said that in order for a defendant to be deemed a participant in a conspiracy, he must have had some stake in the venture or its outcome. I'm instructing you that while proof of a financial interest in the outcome of the scheme is not essential, if you find the defendant had such an interest, that's a factor you may properly consider in deciding whether or not he was a member of the conspiracy charged in the indictment.

As I just mentioned, before a defendant can be found to have been a conspirator, you must find he knowingly joined in the unlawful agreement or plan. So the key question is whether he joined the

conspiracy with an awareness of at least some of the basic aims and purposes of the unlawful agreement.

It's important to note that the defendant's participation in the conspiracy must be established by independent evidence of his own acts or statements, as well as those of the other alleged co-conspirators and, again, the reasonable inferences or conclusions that you may draw from those acts or statements.

The defendant's knowledge is a matter of inference. It's a matter for you to conclude or decide based on the facts proved. I will instruct you that to become a member of a conspiracy, the defendant need not have known the identities of each and every other member, nor does he have to have been aware of all of their activities. He need not have been fully informed as to all the details or the scope of the conspiracy in order to justify an inference of knowledge on his part, and he does not have to have joined in all the conspiracy's unlawful objectives.

The extent of a defendant's participation has no bearing on the issue of his guilt. A conspirator's liability is not measured by the extent or the duration of his participation, because each member may perform separate and distinct acts and may perform them at different times. Some conspirators play major roles. Others play minor parts in the scheme. An equal role is not what the law requires. Even a single act may be enough to draw a defendant within the scope of the conspiracy.

I do want to caution you, however, a defendant's mere presence at the scene of an alleged crime does

not by itself make him a member of the conspiracy. Mere association with one or more members of the conspiracy does not automatically make the defendant a member, because a person may know or be friendly with a criminal without being a criminal himself.

Mere similarity of conduct, or the fact that they may have assembled together and discussed common aims and interests does not necessarily establish membership in the conspiracy.

I also need to caution you that mere knowledge or acquiescence, without participation in the unlawful plan, is not sufficient, or the fact that the actions of a defendant, without knowledge, nearly happened to further the purposes or objectives of the conspiracy doesn't make the defendant a member. More is required under the law. It is necessary that the defendant had participated with knowledge of at least some of the purposes or objectives of the conspiracy, and with the intention of aiding in the accomplishment of those unlawful ends.

* * *

[96–99]

[MS. GAVIN:]

Those elements, I would submit to you, most of them are really not an issue here. There is no real issue that he was a police officer at the time of the events that you heard about. There is no real issue that that is a public official, as the judge has already indicated.

There is no real issue either, ladies and gentlemen, about the interstate commerce element that you heard about. Just briefly, when you go back in the jury room, take a look at Government's Exhibit 57A, and you will see that is the check from GEICO, drawn on an account coming from Fredericksburg.

Wonderful. Now we have something for you to look at as well.

But you will see that check, and you will see it from Fredericksburg, Virginia.

Take a look at Government's Exhibit 26, which is the Majestic file for Markel Taylor's car. You go through that file back in the jury room, and you will see again another check, this one made payable to Markel Taylor and Majestic Auto Body for the repairs to his car. That check came from a bank, you will see, called National City Bank in Ohio.

Those checks is one example of the effect on interstate commerce, money coming from out of state, going into the bank account at Majestic. That's all you need to find.

Likewise, for some of the elements under conspiracy, whether there was an agreement of two or more people to pay police officers to send cars, I will submit to you, ladies and gentlemen, there is no real dispute there either.

You heard from Alex Moreno. You heard from his brother. You heard telephone calls, repeated calls from multiple people discussing the sending of cars in exchange for money. That's all evidence of an agreement.

The overt acts that you heard about in the instructions, again I submit there is no real issue with those, whether those occurred. You heard them on the tapes, the telephone calls. Those are the overt acts.

What this case really boils down to, and what you all need to decide, is whether this defendant, Samuel Ocasio, knowingly became a member of that conspiracy. Did he knowingly agree by his actions to take money from Majestic in exchange for sending cars, and did he do it knowing he was getting the money because he was a police officer?

The answer to that, based on the evidence that you heard, ladies and gentlemen, is absolutely yes, he did, and that evidence is really not very complicated. It's actually quite straightforward.

You recall at the beginning of the trial, when Ms. Kelly was speaking to you in opening, she put up this chart to explain what the scheme was, and the evidence that you heard supports this in every respect.

The police officer is Samuel Ocasio, and there are other police officers that you heard about that you also can consider their conduct in determining whether they were part of the conspiracy and whether there was a conspiracy, as the judge has instructed you.

But it's really quite simple, a phone call. Someone calls 911 or 311 that they need help with an accident. The police officer is dispatched, and you saw the CADs, you will recall, and the records of police officers being sent to the accident.

Then as you saw on the incident summaries that Special Agent Guynn went over yesterday, all ten of them, every single time, every single incident there is a call or a text from the police officer, or a police officer at the scene to Alex Moreno, and every single time Alex Moreno or a tow truck — sometimes he would drive, sometimes the truck comes to the accident — the car ends up back at Majestic, and every time insurance money, or sometimes just the tow bill or something like that comes to Majestic.

* * * *

JURY INSTRUCTIONS
Feb. 24, 2012 **USA v. Samuel Ocasio**
Criminal No. CCV-11-0122

MEMBERS OF THE JURY:

At the outset, I want to thank you for your patience and attention throughout this case, your care in the consideration of the testimonial and documentary evidence, your patience in the matter of recesses and delays when it has been necessary for me to hear counsel out of your presence, and your promptness, making it possible to start each session on time and to resume sessions after recesses without delay.

As you already know, the functions of the Judge and of the Jury are quite different. It is my duty as Judge to instruct you as to the law which applies to this case. It is your duty to decide the facts and, in deciding these facts, to comply with the rules of law and apply them as I state them to you without regard to what you think the law is or should be.

You should not single out any one sentence or individual point in these instructions and ignore the others. Rather, you are to consider all of the instructions as a whole, and you are to consider each instruction in light of all the others. Counsel may quite properly refer to some of the governing rules of law in their arguments. If, however, any difference appears to you between the law as stated by counsel and that stated by the court in these instructions, you are of course to be governed by the court's instructions.

The case is important to the Government, for the enforcement of criminal laws is a matter of prime concern for the community. Equally, it is important to the defendant, who is charged with a serious crime.

The fact that the prosecution is brought in the name of the United States of America entitles the Government to no greater or lesser consideration than that accorded to the defendant.

You and only you are the judges of the facts. If any expression of mine or anything I may or may not have done or said would seem to indicate any opinion relating to any factual matters, I instruct you to disregard it.

In deciding the facts, you may consider not only any evidence to which I may refer, and the evidence to which you may be referred by counsel in their arguments, but you may also consider any testimony or exhibits in the case, whether or not referred to by me or by counsel, which you believe to be important to your decision.

Your verdict must be based solely upon the evidence developed at trial or the lack of evidence.

It would be improper for you to consider, in reaching your decision as to whether the government sustained its burden of proof, any personal feelings you may have about the defendant's race, religion, national origin, sex or age. All persons are entitled to the presumption of innocence and the government has the burden of proof, as I will discuss in a moment.

It would be equally improper for you to allow any feelings you might have about the nature of the crime charged to interfere with your decisionmaking process.

Under your oath as jurors, you are not to be swayed by prejudice or by sympathy. You are to be guided solely by the evidence in this case, and the question you must ask yourselves as you sift through the evidence is: Has the government proven the guilt of the defendant beyond a reasonable doubt?

It is for you alone to decide whether the government has proven that the defendant is guilty of the crime charged solely on the basis of the evidence and subject to the law as I charge you. It must be clear to you that once you let fear, or prejudice, or bias, or sympathy interfere with your thinking there is a risk that you will not arrive at a true and just verdict.

If you have a reasonable doubt as to a defendant's guilt, you should not hesitate for any reason to find a verdict of not guilty. But on the other hand, if you should find that the government has met its burden of proving a defendant's guilt beyond a reasonable doubt, you should not hesitate because of sympathy or any other reason to render a verdict of guilty.

The statements, objections, and arguments of counsel are not evidence and should not be considered as evidence. The evidence in the case consists of the sworn testimony of the witnesses, regardless of who may have called them, all exhibits received in evidence, regardless of who may have

produced them. Any evidence as to which an objection was sustained by the court, and any evidence ordered stricken by the court, must be entirely disregarded. Anything you may have seen or heard outside the courtroom including any newspaper or media publicity of any kind is not evidence, and must be entirely disregarded.

A number of exhibits have been admitted into evidence in this case and will be available for your review. You may consider them for any purpose consistent with these instructions that will assist you in evaluating the merits of this case and you should give them the weight and credibility that you deem appropriate.

At times throughout the trial, I have been called upon to rule on the admissibility of certain offered evidence. It is the duty of the attorney for each side to object when the other side offers testimony or other evidence that the attorney believes is not properly admissible. You should not show any prejudice against an attorney or his client because the attorney objected to the admissibility of evidence, or asked for a conference out of the hearing of the jury or asked the Court for a ruling of the law.

You also should not be concerned with my rulings on objections or the reasons for them. Whether evidence which has been offered is admissible or is not admissible is purely a question of law, and from a ruling on such a question you are not to draw any inference. In admitting evidence, to which an objection has been made, I do not determine what weight should be given to such evidence; that is entirely up to you. You must not guess what the

answer might have been to any question to which an objection was sustained, and you must not speculate as to the reason the question was asked or the reason for the objection.

Let me reemphasize that a lawyer's question to a witness is not evidence. At times, a lawyer may have incorporated into a question a statement which assumed certain facts to be true and asked the witness if the statement was true. If the witness denies the truth of a statement, and if there is no evidence in the record proving that the assumed fact is true, then you may not consider the fact to be true simply because it was contained in the lawyer's question.

In short, questions are not evidence; answers are.

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence —such as the testimony of an eyewitness. The other type of evidence is indirect or circumstantial evidence—the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

There is a simple example of circumstantial evidence which is often used. Assume that when you came into the courthouse this morning the sun was shining. As you were sitting here, someone walked in with an umbrella that was dripping wet. Someone else then walked in with a raincoat that was also dripping wet. You cannot look outside of the courtroom; consequently, you have no direct evidence

of whether or not it is raining. But, on the combination of facts, it would be reasonable and logical for you to conclude that it had been raining.

That is all there is to the definition of circumstantial evidence. You infer on the basis of reason and experience from an established fact the existence or the nonexistence of some other fact. Circumstantial evidence is of no less value than direct evidence. As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts in accordance with all the evidence in the case that you find persuasive, both direct and circumstantial.

You are to consider only the evidence presented, and you may not guess or speculate as to the existence of any facts in this case. But in your consideration of the evidence, you are permitted to draw, from facts which you find have been proved, such reasonable inferences as seem justified in the light of your own experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts which have been established by the evidence in the case.

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You are not required to believe any witness even though his or her testimony is uncontradicted. In determining whether or not to believe a witness, you should carefully scrutinize the testimony given, the circumstances under which each witness has testified, and every matter in evidence

which tends to indicate whether the witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, and his or her demeanor and manner while on the stand. Consider the witness' ability to observe the matters as to which he has testified, and whether he or she impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case and the manner in which each witness might be affected by the verdict. Ask yourself whether the witness has some incentive or loyalty that might cause him or her to shade the truth; or, does the witness have some bias, prejudice, or hostility that may have caused the witness to give you something other than a completely accurate account of the facts? Consider the extent to which, if at all, the testimony of each witness is either supported or contradicted by other evidence.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident may see or hear it differently, and innocent misrecollection, like failure of recollection, is not an uncommon experience. Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, should be considered by you, but, in weighing their effect, you should consider whether the inconsistencies or discrepancies relate to a matter of importance or an unimportant detail, and whether the discrepancy or inconsistency results from innocent error or willful falsehood.

You have heard the testimony of law enforcement officials. The fact that a witness may be employed by the federal, state, or local government as a law enforcement official does not mean that his testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness. At the same time, it is quite legitimate for defense counsel to try to attack the credibility of a law enforcement witness on the grounds that his testimony may be affected by a personal or professional interest in the outcome of the case. It is your decision, after reviewing all the evidence, whether to accept the testimony of the law enforcement witness and to give that testimony whatever weight, if any, you find it deserves.

After you have considered all of the factors bearing upon the credibility of a witness which I have mentioned to you, you may decide to accept all of the testimony of a particular witness, none of the testimony of a particular witness, or part of the testimony of a particular witness. In other words, you may give the testimony of any witness such credibility and weight, if any, as you may think it deserves.

The government has offered evidence in the form of audio recordings of intercepted phone conversations and text messages. All of these recordings were made without the knowledge of the defendant, but with the prior authorization of a court. The use of this procedure to gather evidence is perfectly lawful, and the government is entitled to use the tape recordings in this case.

The parties have been permitted to hand out typed documents, transcripts of recordings, containing their interpretation of what appears on the tape recordings which have been received as evidence. Those were given to you as an aid or guide to assist you in listening to the tapes. In regard to the English language conversations, however, the transcripts are not in and of themselves evidence. Therefore, when the tapes were played, I advised you to listen very carefully to the tapes themselves. You alone should make your own interpretation of what appears on the tapes based on what you heard. If you think you heard something differently than appeared on the transcript then what you heard is controlling.

As to the Spanish language recordings, however, the translations are the evidence.

You have heard from witnesses who testified that they were actually involved in the conspiracies charged in the indictment and from witnesses who have plea agreements with the government. The government may argue, as it is permitted to do, that it must take the witnesses as it finds them. It argues that only people who themselves take part in criminal activity have the knowledge required to show criminal behavior by others. For those very reasons, the law allows the use of accomplice testimony. Indeed, it is the law in federal courts that the testimony of accomplices, or so-called cooperators, may be enough in itself for conviction, if the jury finds that the testimony establishes guilt beyond a reasonable doubt.

However, it is also the case that accomplice or cooperator testimony is of such nature that it must

be scrutinized with great care and viewed with particular caution when you decide how much of that testimony to believe.

You should ask yourselves whether these so-called accomplices or cooperators would benefit more by lying, or by telling the truth. Was their testimony made up in any way because they believed or hoped that they would somehow receive favorable treatment by testifying falsely? Or did they believe that their interests would be best served by testifying truthfully? If you believe that the witness was motivated by hopes of personal gain, was the motivation one which would cause him to lie, or was it one which would cause him to tell the truth?

Similarly, you should bear in mind that a witness who has entered into a plea agreement has an interest in this case different from any ordinary witness. A witness who realizes that he may be able to obtain his own freedom, or receive a lighter sentence by giving testimony favorable to the prosecution, may have a motive to testify falsely. Therefore, you must examine his testimony with caution and weigh it with great care. In sum, you should look at all of the evidence in deciding what credibility and what weight, if any, you will want to give to the accomplice or cooperator witnesses.

There has been evidence introduced at trial that the government called as a witness a person who was using (or addicted to) drugs or alcohol when the events he observed took place. I instruct you that there is nothing improper about calling such a witness to testify about events within his personal knowledge.

On the other hand, his testimony must be examined with greater scrutiny than the testimony of any other witness. The testimony of a witness who was using drugs or alcohol at the time of the events he is testifying about may be less believable because of the effect the drugs may have on his or her ability to perceive or relate the events in question.

If you decide to accept his testimony, after considering it in light of all the evidence in this case, then you may give it whatever weight, if any, you find it deserves.

The defendant begins the trial here with a clean slate. This presumption of innocence alone is sufficient to acquit a defendant unless you, after a careful and impartial consideration of all the evidence, are unanimously convinced beyond a reasonable doubt of the defendant's guilt. This burden never shifts to the defendant for the simple reason that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witness or producing any evidence. Note that the government's burden is not to prove guilt beyond all possible doubt, but rather beyond a reasonable doubt. If the Government fails to sustain this burden, you must find the defendant not guilty.

The defendant did not testify in this case. Under our Constitution, the defendant has no obligation to testify or to present any other evidence because it is the government's burden to prove the defendant guilty beyond a reasonable doubt. That burden remains with the prosecution throughout the entire trial and never shifts to the defendant. A defendant is never required to prove that he is innocent.

You may not attach any significance to the fact that the defendant did not testify. No adverse inference against him may be drawn by you because he did not take the witness stand. You may not consider this against the defendant in any way in your deliberations in the jury room.

The question of possible punishment of the defendant is of no concern to you and should not, in any sense, enter into or influence your deliberations. The duty of imposing sentence, if a defendant is convicted, rests exclusively upon the court. Similarly, the possible consequences of a not guilty verdict are of no concern to you. Your duty is to weigh the evidence in the case and to determine whether or not the defendant is guilty beyond a reasonable doubt, solely upon the basis of the evidence.

The defendant has offered evidence in the form of reputation for honesty and integrity. You should consider such evidence along with all the other evidence in the case.

Evidence in the form of reputation for honesty and integrity may be sufficient to raise a reasonable doubt whether the defendant is guilty, because you may think it improbable that a person of honesty and integrity would commit such a crime. Evidence in the form of reputation of a defendant's honesty and integrity may be inconsistent with those traits of character ordinarily involved in the commission of the crime charged, and may give rise to a reasonable doubt. That is for you to decide after considering all the evidence.

With these preliminary instructions in mind, let us turn to the charges against the defendant, as contained in the indictment. I remind you that an indictment itself is not evidence or proof of any kind. It merely describes the charges made against the defendant. There are four counts before you, and each must be considered separately. Your verdict as to one count does not determine your verdict as to the other counts.

You may not draw any inference, favorable or unfavorable, towards the government or the defendant on trial, from the fact that certain persons were not named as defendants in the indictment or that certain persons are not currently on trial with the defendant. These circumstances must play no part in your deliberations. Whether a person should be named as a co-conspirator or indicted as a defendant, and when, or whether, that person may go to trial, is a matter within the sole discretion of the United States Attorney, the grand jury, and the court. Therefore, you may not consider it in any way in reaching your verdict as to the defendant on trial. Similarly, the fact that one or more of the persons alleged to be involved in these crimes have chosen to plead guilty is not in itself evidence of any kind concerning this defendant who has chosen to deny that he is guilty and proceed to trial.

You will note that the indictment charges that the offenses were committed between or "approximately" on certain dates. The proof need not establish with certainty the exact dates of the alleged offense. It is sufficient if the evidence in this case establishes beyond a reasonable doubt that the

offenses were committed on or between dates reasonably near the dates or time frame alleged.

The defendant is charged in Count One of the Indictment with conspiracy to violate federal law. The relevant statute on this subject is 18 U.S.C. § 371. It provides:

> If two or more persons conspire to commit any offense against the United States and one or more of such persons do any act to effect the object of the conspiracy, each [is guilty of an offense against the United States].

In order to satisfy its burden of proof, the government must establish each of the following four essential elements beyond a reasonable doubt:

First, that two or more persons entered the unlawful agreement charged in the indictment starting in or about the Spring of 2008, that is, the agreement to commit extortion under color of official right;

Second, that the defendant knowingly and willfully became a member of the conspiracy;

Third, that one of the members of the conspiracy knowingly committed at least one of the overt acts charged in the indictment; and

Fourth, that the overt act(s) which you find to have been committed was (were) committed to further some objective of the conspiracy.

A person acts knowingly if he acts intentionally and voluntarily, and not because of ignorance, mistake, accident, or carelessness. Whether the

defendant acted knowingly may be proven by the defendant's conduct and by all of the facts and circumstances surrounding the case.

To act "willfully" means to act with knowledge that one's conduct is unlawful and with the intent to do something the law forbids, that is to say with the bad purpose to disobey or disregard the law.

The defendant's conduct was not "willful" if it was due to negligence, inadvertence or mistake.

The first element which the government must prove beyond a reasonable doubt to establish the offense of conspiracy is that two or more persons entered the unlawful agreement charged in the indictment.

In order for the government to satisfy this element, you need not find that the alleged members of the conspiracy met together and entered into any express or formal agreement. Similarly, you need not find that the alleged conspirators stated, in words or writing, what the scheme was, its object or purpose, or every precise detail of the scheme or the means by which its object or purpose was to be accomplished. What the government must prove is that there was a mutual understanding, either spoken or unspoken, between two or more people to cooperate with each other to accomplish an unlawful act.

You may, of course, find that the existence of an agreement to disobey or disregard the law has been established by direct proof. However, since conspiracy is, by its very nature, characterized by secrecy, you may also infer its existence from the

circumstances of this case and the conduct of the parties involved.

In a very real sense, then, in the context of conspiracy cases, actions often speak louder than words. In this regard, you may, in determining whether an agreement existed here, consider the actions and statements of all of those you find to be participants as proof that a common design existed on the part of the persons charged to act together to accomplish an unlawful purpose.

The second element which the government must prove beyond a reasonable doubt to establish the offense of conspiracy is that the defendant knowingly, willfully and voluntarily became a member of the conspiracy.

If you are satisfied that the conspiracy charged in the indictment existed, you must next ask yourselves who the members of that conspiracy were. In deciding whether the defendant whom you are considering was, in fact, a member of the conspiracy, you should consider whether the defendant knowingly and willfully joined the conspiracy. Did he participate in it with knowledge of its unlawful purpose and with the specific intention of furthering its business or objective as an associate or worker?

In that regard, it has been said that in order for a defendant to be deemed a participant in a conspiracy, he must have had a stake in the venture or its outcome. You are instructed that, while proof of a financial interest in the outcome of a scheme is not essential, if you find that the defendant had such an interest, that is a factor which you may properly

consider in determining whether or not the defendant was a member of the conspiracy charged in the indictment.

As I mentioned a moment ago, before the defendant can be found to have been a conspirator, you must first find that he knowingly joined in the unlawful agreement or plan. The key question, therefore, is whether the defendant joined the conspiracy with an awareness of at least some of the basic aims and purposes of the unlawful agreement.

It is important for you to note that the defendant's participation in the conspiracy must be established by independent evidence of his own acts or statements, as well as those of the other alleged co-conspirators, and the reasonable inferences which may be drawn from them.

The defendant's knowledge is a matter of inference from the facts proved. In that connection, I instruct you that to become a member of the conspiracy, the defendant need not have known the identities of each and every other member, nor need he have been apprised of all of their activities. Moreover, the defendant need not have been fully informed as to all of the details, or the scope, of the conspiracy in order to justify an inference of knowledge on his part. Furthermore, the defendant need not have joined in all of the conspiracy's unlawful objectives.

The extent of a defendant's participation has no bearing on the issue of a defendant's guilt. A conspirator's liability is not measured by the extent or duration of his participation. Indeed, each member

may perform separate and distinct acts and may perform them at different times. Some conspirators play major roles, while others play minor parts in the scheme. An equal role is not what the law requires. In fact, even a single act may be sufficient to draw the defendant within the ambit of the conspiracy.

I want to caution you, however, that the defendant's mere presence at the scene of the alleged crime does not, by itself, make him a member of the conspiracy. Similarly, mere association with one or more members of the conspiracy does not automatically make the defendant a member. A person may know, or be friendly with, a criminal, without being a criminal himself. Mere similarity of conduct or the fact that they may have assembled together and discussed common aims and interests does not necessarily establish membership in the conspiracy.

I also want to caution you that mere knowledge or acquiescence, without participation, in the unlawful plan is not sufficient. Moreover, the fact that the acts of a defendant, without knowledge, merely happen to further the purposes or objectives of the conspiracy, does not make the defendant a member. More is required under the law. What is necessary is that the defendant must have participated with knowledge of at least some of the purposes or objectives of the conspiracy and with the intention of aiding in the accomplishment of those unlawful ends.

In sum, the defendant, with an understanding of the unlawful character of the conspiracy, must have intentionally engaged, advised or assisted in it for

the purpose of furthering the illegal undertaking. He thereby becomes a knowing and willing participant in the unlawful agreement-that is to say, a conspirator.

The third element which the government must prove beyond a reasonable doubt, to establish the offense of conspiracy, is that at least one of the overt acts charged in the indictment was knowingly committed by at least one of the conspirators, at or about the time and place alleged.

The indictment charges that the following overt acts were committed in the district of Maryland.

a. On or about December 14, 2010, at approximately 5:52 p.m., defendant Manrich called Moreno and told Moreno that he and another BPD officer were going to split a payment from Moreno for a vehicle that Manrich had sent to Majestic from a hit and run scene.

b. On or about January 15, 2011, defendant Ocasio called Moreno, but the call went to voice mail. Moreno immediately called Ocasio back and during that call, Ocasio stated that he needed a tow truck at Russell Street in front of the Holiday Inn.

c-h. [READ Counts Two through Seven, which are incorporated as overt acts.]

In order for the government to satisfy this element, it is not required that all of the overt acts alleged in the indictment be proven.

Similarly, you need not find that the defendant you are considering committed the overt act. It is sufficient for the government to show that one of the

conspirators knowingly committed an overt act in furtherance of the conspiracy, since such an act becomes, in the eyes of the law, the act of all of the members of the conspiracy.

You are further instructed that the overt act need not have been committed at precisely the time alleged in the indictment. It is sufficient if you are convinced beyond a reasonable doubt, that it occurred at or about the time and place stated.

Finally, you must find that either the agreement was formed or that an overt act was committed in the District of Maryland, which includes the entire state of Maryland.

The fourth, and final, element which the government must prove beyond a reasonable doubt is that the overt act was committed for the purpose of carrying out the unlawful agreement.

In order for the government to satisfy this element, it must prove, beyond a reasonable doubt, that at least one overt act was knowingly and willfully done, by at least one conspirator, in furtherance of some object or purpose of the conspiracy, as charged in the indictment. In this regard, you should .bear in mind that the overt act, standing alone, may be an innocent, lawful act. Frequently, however, an apparently innocent act sheds its harmless character if it is a step in carrying out, promoting, aiding or assisting the conspiratorial scheme. You are therefore instructed that the overt act does not have to be an act which, in and of itself is criminal or constitutes an objective of the conspiracy.

You will recall that I have admitted into evidence against the defendant the acts and statements of others because these acts and statements were committed by persons who, the government charges, were also confederates or co-conspirators of the defendant on trial.

The reason for allowing this evidence to be received against the defendant has to do with the nature of the crime of conspiracy. A conspiracy is often referred to as a partnership in crime. Thus, as in other types of partnerships, when people enter into a conspiracy to accomplish an unlawful end, each and every member becomes an agent for the other conspirators in carrying out the conspiracy.

Accordingly, the reasonably foreseeable acts, declarations, statements and omissions of any member of the conspiracy and in furtherance of the common purpose of the conspiracy, are deemed, under the law, to be the acts of all of the members, and all of the members are responsible for such acts, declarations, statements and omissions.

If you find, beyond a reasonable doubt, that the defendant whose guilt you are considering was a member of the conspiracy charged in the indictment, then, any acts done or statements made in furtherance of the conspiracy by persons also found by you to have been members of that conspiracy, may be considered against that defendant. This is so even if such acts were done and statements were made in the defendant's absence and without his knowledge.

However, before you may consider the statements or acts of a co-conspirator in deciding the

issue of a defendant's guilt, you must first determine that the acts and statements were made during the existence, and in furtherance, of the unlawful scheme. If the acts were done or the statements made by someone whom you do not find to have been a member of the conspiracy or if they were not done or said in furtherance of the conspiracy, they may be considered by you as evidence only against the member who did or said them.

Mr. Manrich is no longer on trial with Mr. Ocasio. That fact alone must not affect your consideration of Mr. Ocasio in any way. Similarly, the statements that may have been made by Mr. Manrich after his arrest, whether to the unemployment claims adjuster or to SA Guynn do not involve Mr. Ocasio and may not be used against him in any way. However, if you find that Mr. Manrich was a member of the conspiracy with which Mr. Ocasio is charged, and that Mr. Ocasio also was a member of the conspiracy, you may consider any acts done by Mr. Manrich and any statements made by Mr. Manrich during the course of the conspiracy and in furtherance of the conspiracy in your determination as to whether the government has proved all the elements of the offenses charged against Mr. Ocasio.

Counts Five through Seven charge the defendant Ocasio with extortion under color of official right. Each Count reads as follows:

[Read Counts Five through Seven]

Section 1951 of Title 18 of the United States Code, in pertinent part, provides:

> Whoever in any way or degree obstructs, delays, or affects commerce or the movement of an article or commodity in commerce, by extortion or attempts or conspires so to do, [commits a crime].

Extortion under color of official right is the use of one's position as a public official, or the authority of public office, to obtain money or services not due the official or his public office.

In order to meet its burden of proof, the government must establish beyond a reasonable doubt each of the following elements:

First, that the defendant was a public official, or held public office;

Second, that the defendant obtained property or services not due him or his office;

Third, that this property or service was given, with the consent of the giver, to the defendant, who knew that the property was given because of the power of the defendant's official position; and

Fourth, that interstate commerce, or an item moving in interstate commerce, was delayed, obstructed, or affected in any way or degree.

The first element that the government must prove beyond a reasonable doubt is that at the time of the events charged in the indictment, the defendant was a public official, or held public office. This would include a position as a Baltimore City police officer.

The second element which the government must prove beyond a reasonable doubt is that defendant

obtained money, goods, or services, which were not legitimately owed to the office the defendant represents.

The government *does* not have to prove that the items given were of personal benefit to "the defendant. However, the value of the goods or services may be considered in helping you determine the facts of the situation.

The government does have to prove, beyond a reasonable doubt, that the goods or services obtained were not due or owing the office which the defendant represents.

The third element which the government must prove beyond a reasonable doubt is that the defendant used the authority of his office or position to obtain the money, goods or services. That is, you must decide whether the defendant represented himself as capable of doing something, or of refusing to do something because of his official position.

To satisfy this element, the government must prove beyond a reasonable doubt the defendant obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts rather than being given voluntarily or unrelated to the defendant's office. The defendant need not have affirmatively induced the payments by his actions, but he must have known that the payment was offered in exchange for a specific exercise of his official powers. You do not have to determine whether the defendant could or did actually perform the service, or whether he actually had a duty to do so.

If you decide that the defendant was given money, goods or services not due the office he represents, you must then decide whether the defendant used the authority of his office or position to obtain the money, goods or services. The focus of your inquiry is whether the money, goods or services were given to the defendant because of the defendant's misuse of his position. The government must prove beyond a reasonable doubt that these items were given to the defendant in connection with his power and authority as a public official. The giver may have initiated this exchange, and the parties may be on friendly terms. These are factors to consider in deciding whether the giver gave the payments because he believed the defendant would use his office for acts not properly related to his official duty, or whether, instead, the giver was making a voluntary contribution.

Unless you decide, beyond a reasonable doubt, that the defendant knew the giver's consent was wrongfully obtained—that is, that the money, goods or services were given in connection with the defendant's misuse of his official position rather than being given voluntarily—you cannot convict the defendant.

If you decide that the defendant obtained another's property, under color of official right, you must then decide whether this action would affect interstate commerce in any way or degree. You must determine whether there is an actual or potential effect on commerce between any two or more states (*or* between one state and the District of Columbia *or* between a state and a U.S. Territory or possession *or*

on commerce within one state that goes through any place outside that state).

If you decide that there was any effect at all on interstate commerce, then that is enough to satisfy this element. The effect can be minimal. For example, if a payment to the defendant would prevent the use of those funds to purchase articles which travel through interstate commerce, that would be a sufficient effect on interstate commerce.

If you decide that interstate commerce would potentially or probably be affected if the defendant had successfully and fully completed his actions, then the element of affecting interstate commerce is satisfied. You do not have to find that interstate commerce was actually affected. However, if the defendant has finished his actions, and done all he intended to do, and you determine there has been no effect on interstate commerce, then you cannot find the defendant guilty.

You do not have to decide whether the effect on interstate commerce was harmful or beneficial to a particular business, or to commerce in general. The government satisfies its burden of proving an effect on interstate commerce if it proves beyond a reasonable doubt any effect, whether it was harmful or not.

The defendant need not have intended or anticipated an effect on interstate commerce. You may find the effect is a natural consequence of his actions. If you find that the defendant intended to take certain actions—that is, he did the acts charged in the indictment in order to obtain property—and

you find those actions have either caused, or would probably cause, an effect on interstate commerce, then you may find the requirements of this element have been satisfied.

The indictment alleges that the defendant aided and abetted the commission of the offenses in Counts Five through Seven. Under the aiding and abetting statute, it is not necessary for the government to show that a defendant himself physically committed the crime with which he is charged in order for the government to sustain its burden of proof. A person who aids or abets another to commit an offense is just as guilty of that offense as if he committed it himself.

Accordingly, you may find a defendant guilty of the offense charged if you find beyond a reasonable doubt that the government has proven that another person actually committed the offense with which the defendant is charged, and that the defendant aided or abetted that person in the commission of the offense. As you can see, the first requirement is that you find that another person has committed the crime charged. Obviously, no one can be convicted of aiding or abetting the criminal acts of another if no crime was committed by the other person in the first place. But if you do find that a crime was committed, then you must consider whether the defendant aided or abetted the commission of that crime.

In order to aid or abet another to commit a crime, it is necessary that the defendant knowingly associate himself in some way with the crime, and that he participate in the crime by doing some act to help make the crime succeed.

To establish that a defendant knowingly associated himself with the crime, the government must establish that the defendant intended for money to be given in connection with the misuse of the defendant's official position. To establish that the defendant participated in the commission of the crime, the government must prove that defendant engaged in some affirmative conduct or overt act for the specific purpose of bringing about that crime. The mere presence of a defendant where a crime is being committed, even coupled with knowledge by the defendant that a crime is being committed, or merely associating with others who were committing a crime is not sufficient to establish aiding and abetting. One who has no knowledge that a crime is being committed or is about to be committed but inadvertently does something that aids in the commission of that crime is not an aider and abettor. An aider and abettor must know that the crime is being committed and act in a way which is intended to bring about the success of the criminal venture. To determine whether a defendant aided or abetted the commission of the crime with which he is charged, ask yourself these questions: Did he participate in the crime charged as something he wished to bring about? Did he knowingly associate himself with the criminal venture? Did he seek by his actions to make the criminal venture succeed? If he did, then the defendant is an aider and abettor, and therefore guilty of the offense. If, on the other hand, your answer to any one of these questions is "no," then the defendant is not an aider and abettor, and you must find him not guilty.

The government introduced evidence that the alleged actions of the defendant violated Baltimore City Police Department general orders. Proof beyond a reasonable doubt that such actions occurred and that they violated such standing orders and even that the defendant knew his actions violated such standing orders does not, by itself, show that a defendant is guilty either of the participation in the charged conspiracy charged in Count One or any of the alleged extortions charged in Counts Five through Seven. A knowing violation of the general orders, however, if proved, is evidence you may consider in making your decision whether the government has proved each of the elements of the crime beyond a reasonable doubt.

In conclusion, let me remind you that your verdict must be unanimous, reflecting the judgment of each and every one of you. Consider it in the jury room deliberately and carefully, in light of the instructions which I have given you, and use the same common sense and the same intelligence that you would use in determining any important matter that you have to decide in the course of your own affairs.

It is your duty, as Jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow Jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. But do not surrender

your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow Jurors, or for the mere purpose of returning a verdict. If, after carefully considering all the evidence and the arguments of your fellow jurors, you entertain a conscientious view that differs from the others, you are not to yield your conviction simply because you are outnumbered.

Upon retiring to the jury room, your first duty will be to elect a foreperson. The foreperson has no extra vote, but he or she will preside over your deliberations and be your spokesperson in court.

If it becomes necessary during your deliberations to communicate with the court, you may send a note by the court security officer. Never attempt to communicate with the court except in writing. You will note from the oath about to be taken by the court security officer that they, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case. And bear in mind always that you are not to tell to the court, or anyone else, how you stand in terms of a numerical division, until after you have reached a unanimous verdict.

In order to record your verdict in this case, we have prepared a verdict form for you.

(Go over verdict form.)

When you have reached a unanimous agreement, the foreperson should fill out the verdict form in accordance with your agreement. Then the foreperson should sign and date the form in the space provided at the end.

When you have agreed and finished completing the verdict form, the foreperson should rap on the door and inform the Clerk or Court Security Officer simply that you have agreed upon a verdict. The foreperson should not disclose or indicate in any way what your verdict is at that time. The verdict must be announced for the first time in open court.

When you return to the jury box, the Clerk will ask you, "Have you agreed upon your verdict?" And we hope that you collectively will respond that you have.

The Clerk will then ask, "Who shall say for you?" All of you will respond, "Our foreperson."

Your foreperson will then stand and present the verdict form to the Clerk, who will show it to me. After my review, it will be returned to the Clerk for reading in open court.

[ALTERNATES EXCUSED]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

v. **CRIMINAL No.**

SAMUEL OCASIO **CCB-11-0122**

Defendant.

VERDICT OF THE JURY

We, the jury, render the following verdicts in the above-captioned case:

COUNT ONE (CONSPIRACY):

Do you find the defendant Samuel Ocasio guilty or not guilty of the conspiracy charge in Count One?

X	
Guilty	Not Guilty

COUNT FIVE (EXTORTION UNDER COLOR OF OFFICIAL RIGHT):

Do you find the defendant Samuel Ocasio guilty or not guilty of the extortion under color of official right charge in Count Five?

X	
Guilty	Not Guilty

COUNT SIX (EXTORTION UNDER COLOR OF OFFICIAL RIGHT):

Do you find the defendant Samuel Ocasio guilty or not guilty of the extortion under color of official right charge in Count Six?

X	
Guilty	Not Guilty

COUNT SEVEN (EXTORTION UNDER COLOR OF OFFICIAL RIGHT):

Do you find the defendant Samuel Ocasio guilty or riot guilty of the extortion under color of official right charge in Count Seven?

X	
Guilty	Not Guilty

Date: 2/23/12

[SIGNATURE REDACTED]
Foreperson of the Jury

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

v. **CRIMINAL No. CCB-11-0122**

SAMUEL OCASIO

Defendant.

SENTENCING HEARING

Before: The Honorable Catherine C. Blake
United States District Judge

Baltimore, Maryland

June 1, 2012

* * *

[2–38]

THE CLERK: All rise. This Honorable Court now resumes in session, The Honorable Catherine C. Blake presiding.

THE COURT: Good afternoon, everyone. Be seated, please.

Ms. Kelly, if you would call the case.

MS. KELLY: Good afternoon. Calling the case United States versus Samuel Ocasio, CCB-11-0122. Tonya Kelly on behalf of the United States. Also seated at counsel table is Special Agent Rob Guynn and Detective Matthew Smith with the Baltimore Police Department, and we are here for sentencing.

THE COURT: All right. Thank you.

MR. CROWE: Good afternoon, Your Honor. Thomas Crowe on behalf of Mr. Ocasio, who is seated with me at counsel table.

THE COURT: Okay. Thank you. And we are here for sentencing. Mr. Ocasio was, of course, convicted after a jury trial on one count of conspiracy and three counts of extor[t]ion. I need to begin by calculating the advisory guideline range, and I understand there is at least one dispute. I think we're in agreement that the — and this would apply on all the counts together as I understand it — base offense level of 14, an increase of two because there was more than one payment, and then the presentence report calculated an additional two levels for the loss being greater than $5,000, essentially based on the Government's Statement of Facts, and I gather that is a matter of disagreement, so I'll come back to that.

Addressing the presentence report generally, other than that guidelines dispute and another dispute about restitution, any additions, corrections, modifications from the Government's point of view?

MS. KELLY: No, Your Honor.

THE COURT: Okay. Mr. Crowe?

MR. CROWE: No, Your Honor.

THE COURT: Obviously you've read it. Has Mr. Ocasio had a chance to read it?

MR. CROWE: Yes.

THE COURT: Okay. And nothing else. All right.

Okay. So we can talk about the amount of the loss. Depending on that, we are either at an offense

level of 16, Criminal History Category I, which I think is at 21- to 27-month range, or an 18, Criminal History Category I, which is from 27 to 33 months.

Why don't we go ahead and start with the amount of loss and how — I guess I'll turn to the Government, how you are calculating it at more than 5,000.

MS. KELLY: Yes, Your Honor.

The Government believes that, because Mr. Ocasio was convicted of 18 United States Code § 371, the conspiracy charge, that Mr. Ocasio is responsible in terms of a loss calculation under the guidelines for the losses attributable to himself personally, but also the losses of those other members of the conspiracy that were reasonably foreseeable to him.

The Government believes that it's taken a particularly restricted look at this and has come up with a pretty low number for Mr. Ocasio in light of the fact that he was part of a conspiracy that involved somewhere between 40 and 50 other Baltimore police officers. The Government believes that there was ample evidence at the trial to show that Mr. Ocasio was fully aware of Leonel Rodriguez' involvement in the scheme and should therefore be at least responsible for what Mr. Rodriguez' payments were.

I'd like to point to the few parts in the trial that I think the Court can look at here. Just it was a while ago for all of us. The first is that there was evidence at the trial that Mr. Ocasio, when he called Alex Moreno to pick up the car that Mr. Ocasio had encountered during the night that Mr. Moreno and

Rodriguez were going to call Mr. Rodriguez' car stolen, that there was contact between Mr. Ocasio and Rodriguez that night, which was not — Mr. Moreno's testimony was corroborated by toll records which show that, prior to picking up the car, Mr. Ocasio was in contact with Mr. Rodriguez, and I think Mr. Moreno testified that that was because he was coordinating logistically where they needed to go and what time they needed to get there. When Mr. Moreno arrived in the tow truck to pick up Mr. Ocasio's car, Rodriguez was also present.

Secondly, there was the wiretapped call that was played at the trial where Officer Rodriguez was telling Alex Moreno that Ocasio had told him that he was going to stop sending cars to him because of Mr. Moreno taking too long to fix his car.

And then, thirdly, Exhibit 81 at the trial were toll records, which establish communication between Mr. Ocasio and Mr. Rodriguez starting in November of '09 and spanning essentially up and beyond the arrest in this case.

Therefore, the Government believes and obviously the jury believed that Mr. Ocasio was in a conspiracy with others, including Mr. Rodriguez, and, therefore, the Government believes that any payments made to Mr. Rodriguez would be reasonably foreseeable to Mr. Ocasio.

Anticipating Mr. Ocasio's argument that he may not know that Officer Rodriguez happened to be much more frequent than he was, the Government believes a fair calculation at least would be that he could foresee that Rodriguez was at least as often as

he was, and the Government doesn't know any real other way to do it. I think the Government is being generous in that Officer Rodriguez happens to be, as the Court is aware, one of the most frequent officers who contacted Alex Moreno and ended up making a lot of money. There were checks to Officer Rodriguez in the 8 or $9,000 range, and more cash.

So the Government believes that a fair loss calculation and a generous to Mr. Ocasio calculation would be the $1,500 for referring cars that was proven at trial in combination with the loss to GEICO of approximately $2,500, and, if you then added a $1,500 amount for what was reasonably foreseeable to him to Mr. Rodriguez, that that would put him between 5 and $10,000. I recognize that that's not a perfect calculation, but I do believe that there is evidence that was presented during the trial and obviously accepted by the jury that supports that type of calculation in a situation like this where it's impossible to calculate with precision.

THE COURT: All right. Thank you.

Mr. Crowe?

MR. CROWE: Thank you, Your Honor.

The Government, of course, bears the burden of proof of establishing the specific offense characteristic that the amount of loss exceeded $5,000. We simply don't think that they've been able to do that on the presentation that they've given today.

Going straight to the calculations, if one accepts their assumptions that Mr. Ocasio received $1,500 —

and I think they actually proved — the jury actually found 900. I think there was evidence of two other payments, so that's probably fair. If this was a situation wherein my client also or my client should have expected that Mr. Rodriguez received at least that much, that would bring us to $3,000.

The difficulty with adding the other $2,515 is that my client's car was involved in a legitimate accident. Even if one believes that he was aware that Moreno was adding damage to the car — and we don't think that he was — the amount of loss to GEICO would have been considerably less than the 2,515 because the car was involved in a legitimate accident, and, again, it's the Government's burden of proof to show precisely what it is that we are talking about.

Going to the larger question, I would submit to the Court that the evidence that my client had any knowledge that Mr. Rodriguez was involved in these matters is pretty thin. My client did not call Mr. Rodriguez when an accident occurred. Mr. Rodriguez was involved with Mr. Moreno in a scheme where they were going to file a false report that Rodriguez' car had been stolen, and he was, as I say, pretty much along for the ride. I believe there was reference to the fact that there was a brief discussion of the two, but no evidence at all as to what was said.

With respect to Rodriguez' statement that my client had said that he had stopped sending cars to Moreno, that shows nothing with respect to what my client would have known about what Mr. Rodriguez was doing.

I think Ms. Kelly made a slip when she said that Mr. Rodriguez' testimony was corroborated by toll records. I think, as the Court is well aware, Mr. Rodriguez never testified in this case. He was a witness. He made a cooperation deal with the United States Government. He was on their witness list. He was not called to testify at trial, and, indeed, he is not present to testify in court this morning, although he would clearly be obligated to do so if the Government chose to call him.

I think, for all those reasons, we believe that the Government simply hasn't made the case for adding the additional two offense levels.

THE COURT: Do you want to comment on the restitution to GEICO issue?

MS. KELLY: Sure. And I think it's obvious that I misspoke. I wasn't trying to suggest that Mr. Rodriguez testified at the trial.

Yes. As to the restitution to GEICO, first of all, there was testimony at the trial as to this legitimate accident. The person who was also involved in the accident described what the bumper looked like after the accident as a small, little crack, and I also think that Mr. Moreno testified that it was just a crack in the bumper before they added the damage.

Secondly, I think that — and I apologize. I didn't know that this was the objection to the loss amount in terms of the specific, but I do think that there is an argument to be made that, when you commit insurance fraud like this, the loss amount is the entire claim paid by GEICO. If GEICO had known that Mr. Ocasio had lied to them and had added

damage, they may have refused the claim completely, and, to suggest that they would have said, "Okay. Well, we're going to fix that crack," and to try to, you know, deduct that from the $2,500, I don't think that would be how loss would be calculated if this were charged as an insurance fraud claim. If you lie to your insurance company, I'm not sure that they continue to cover you, or the accident, whatever it is that you were engaged in, besides the fact that there was evidence that the legitimate damage was a crack in the bumper.

THE COURT: I guess the problem I have, particularly given the context in which we are now making these decisions — and the burden is on the Government. It's following a trial. Perhaps you addressed that in your letter. That's an interesting theory that you've just addressed. It may very well be true. I don't believe there was anything in the record to support that, that GEICO would have taken a position to refuse the entire claim. I'm also not sure that there is evidence in the record to support Mr. Ocasio knowingly lying to GEICO. I seem to remember that the evidence was a little equivocal about when, if at all, he knew that Mr. Moreno was going to add damage.

MS. KELLY: Well, you know, frankly, Your Honor, I just disagree, that the testimony at trial from Shannon Seaders was that Mr. Ocasio had called his insurance company and specifically stated, "I saw the damage at the date of the accident. I walked to the date of the accident and saw it, and what there is, is exactly what it looked like that day."

THE COURT: Okay. So it's after the fact?

MS. KELLY: No. He — and then secondly —

THE COURT: The statement to Seaders? When is the statement to Ms. Seaders? That's what I mean.

MS. KELLY: Right. So Mr. Ocasio had told GEICO that, yes, when questioned about the damage — remember how it was like the height was much higher than a small Honda Civic? Mr. Ocasio had reiterated that, yes, in fact, that that is all the damage, I saw it on the date of the accident because I walked down to the scene of the accident.

The other person involved in the accident said that Mr. Ocasio was not there and not in the car, and, secondly, then, right after that line of testimony, there was also in that log that came in was that Mr. Ocasio had seen the damage with Mr. Adolf, who was the claims adjustor. There was that — it was an exhibit — I truly had no idea we were going to get this far into the weeds on the GEICO issue, and I apologize; I would have brought it with me — was that he had also reiterated with Mr. Adolf that, yep, that's all the damage that was on the car, and there is simply no way that all that damage was there, and he told GEICO that it was and that he saw it on the date of the accident.

THE COURT: Okay. Mr. Crowe?

MR. CROWE: Your Honor, my recollection is not as good as it should be with respect to the accident, and the statements which were, as I recall, on a very cryptic call log with a lot of abbreviations where somebody testified who was not, in fact, the person who made the entries.

My recollection is that there was a telephone conversation which was noted in which Mr. Ocasio was asked how it was possible that the damage had occurred, I think a bit higher than the bumper, and he simply and quite honestly said that he didn't know. I think the proof of the pudding on this matter is that, for whatever reason itself, GEICO being aware of the dispute, actually made the payment in the case, and, as I understand it, has not attempted to recover anything at this time.

I simply can't recall what the note was concerning, I think, Mr. Adolf, who was the insurance adjustor, in my mind. I'm just drawing a blank on that at this point.

THE COURT: And I don't know if it is in an exhibit that is as easily obtainable, but what Ms. Kelly is saying sounds familiar to me, and, again, I'm trying to determine when in the sequence of events Mr. Ocasio's responsibility may have come in. There is a slightly separate question about whether he knew in advance that damage might be added, but —

MR. CROWE: Yes.

THE COURT: — I do believe that Ms. Kelly's now recalled a sequence of events that I think is correct, that the damage was added, GEICO questioned it, Mr. Ocasio — the false statement is not, "I don't know how it happened," necessarily, but to claim that the damage was there, that he saw it the day of the accident, and it therefore must have come from the accident is what I understand and now recall to be the false part of the claim to GEICO.

MR. CROWE: Getting perhaps even further into the weeds, the question is, you know: Would there have been $600 worth of damage to the car without the damage added, and I don't know. Certainly this is matters that I think the Government could have proven with people at GEICO, if not at trial, certainly here at sentencing, and, again, it is their burden of proof.

THE COURT: Well, I think I will, for now, until we see where the rest of this goes, simply reserve on whether I'm going to add that two levels or not.

MS. KELLY: If I can, Your Honor, as we move forward, if the Court is inclined to not award restitution because of not knowing how GEICO would have dealt with the claim, the Government will ask for there to be a separate restitution hearing to be able to figure that out. I truly apologize. I wasn't entirely sure that this was the dispute. I think that it's permissible under the statute for there to be a separate restitution hearing, and, frankly, I think it only fair for GEICO. I take full ownership. I just don't think it would be fair for GEICO to not be heard on the issue, and I apologize to the Court for not recognizing sort of the specificity of this objection by Mr. Crowe, and take full responsibility for it, but the Government would ask that, if this is an issue for restitution, that we be able to do that.

THE COURT: Okay.

MR. CROWE: I thought our memorandum was pretty clear that we saw this as an issue. I don't know if the Court wants to hear argument on the other matters of restitution — that is, whether any restitution

should be offered to the Baltimore Police Department — and the question of forfeiture.

THE COURT: Yes, I do, depending on where we are. I'm looking at your memorandum. The presentence report noted a restitution request for the Baltimore City Police Department of $4,200, and I'm not sure whether that is repeated — I think it is — in the Government's correspondence, and my first question, I guess, is to the Government: Where does the 4,200 come from?

MS. KELLY: Your Honor, earlier, as we were proceeding with this case — this was prior to going through the sentencings of the various defendants, and so there was some conversation about, you know, whether, if he's being held responsible for Mr. Rodriguez' payments, whether that should be part of restitution, and the Government has abandoned that approach, and each defendant who has been sentenced prior to Mr. Ocasio has only been responsible for the payments to which he received, and not the conspiracy payments, and, therefore, the Government believes the restitution should be $1,500 to the Baltimore Police Department.

THE COURT: Which is a change from the position in your letter —

MS. KELLY: Yes.

THE COURT: — as recently as May 25th?

MS. KELLY: Yes.

THE COURT: Okay.

MR. CROWE: Your Honor, I realize that restitution and forfeiture aren't the predominant issues that

we're here on today, but we clearly take position in our brief that the Baltimore Police Department is not a victim in this case, but, if it is a victim, it is only entitled to restitution for the amount of its actual loss. We cited in a footnote the *Harvey* case, which is the Fourth Circuit law which governs in this district, and it says simply that an individual's gain is not tantamount to a victim's loss. The amount of gain maybe is a proper measure in forfeiture, but it is not the proper measure in a situation such as this.

The Baltimore Police Department clearly didn't lose $1,500. If the jury is correct and Mr. Ocasio did the things they say that he did, at most, what they lost was, you know, whatever time value that he took when he should have been working on his shift.

THE COURT: How do you respond to the Government's citation of the cases like *McNair*, which then quoted *United States versus Carter*? I mean, it seems to me that the theory is this was a betrayal of trust, he took advantage of his official position to get $1,500 that he wasn't entitled to, and that the Government, the public employer, should be entitled to recoup that?

MR. CROWE: With respect to the *McNair* case, as I recall it, that was a situation where a government contractor — I think probably a municipal contractor — had made illegal bribe payments. I believe it was for some land use and development determinations. The Court was quite explicit in saying that they felt that the contractor recouped those bribe payments from the Government authority simply by adding them back onto its contract bid with the Government, so the Court actually, I think, made an explicit

finding in that case that the amount of the gain was loss to the governmental entity itself.

The *Carter* case was actually a civil equitable action, not a criminal case, and it was actually a civil action for an accounting, as I recall, and, in that civil action, of course, where there is fraud involved — and my recollection is that the disgorgement of improper profits is a correct measure of damages in a civil action.

The only case that I found where they cited where a judge appears to have equated the amount of the illegal payments to the loss to a governmental entity was the case from the Eastern District of New York. It was *Abbadessa*, or something like that. It was certainly an opinion by a well-respected district judge, not that you're not all well respected, but it was Judge Jack Weinstein, and what he simply did was that — it's a very long opinion, and, as he went — this was a case where people, who were taxi commissioners, were being paid, as I recall, to ignore problems with taxes, to pass them through the inspections, and, in that case, Judge Weinstein did, for each of the individual defendants — I think there was some 15 or 20. For each one of them, he simply added in the amount that they had received as being owed in restitution to the City of New York. He didn't explain why he did it. It wasn't subject to appeal, and, again, we think the *Harvey* case is the governing authority in this jurisdiction.

THE COURT: Ms. Kelly?

MS. KELLY: Your Honor, I think the theory that is advanced in these line of cases is that which the

Government believes is the accurate one, that this is a betrayal of trust, and that there is a loss to the police department when Mr. Ocasio, instead of patrolling and working and doing the things he's supposed to do as a police officer, is instead waiting at accident scenes for tow trucks to arrive longer than he should, or making calls to Officer Rodriguez to tell him how to get Alex to get there, and that there is a loss to the City for Mr. Ocasio's services that he should be providing to the City while he is instead engaged in what he was doing.

For instance, the night of Victor Reillo's car, I mean, hours of his shift were spent coordinating Mr. Moreno getting to the Southeast District to pick up Victor Reillo's car instead of doing whatever else Mr. Ocasio is supposed to be doing when he's working. I think there was testimony that, the night that Mr. Ocasio went to the scene for Quintanilla's car, that the other officer who testified, Horace — I can't remember his last — McGriff. Officer McGriff testified that he was pretty much ready to go, and Mr. Ocasio is hanging around.

I think that there is just absolutely a loss to the Baltimore Police Department when Mr. Ocasio is calling Alex Moreno instead of doing his job, and I don't think that $1,500 to the Baltimore Police Department is an outrageous amount or some unreasonable amount for Mr. Ocasio to repay.

In response to Mr. Crowe's sentencing memorandum, he had advanced the argument that Mr. Ocasio should not have to repay the $300 that Alex Moreno paid him for bringing his own car, and the $300 that he had paid for bringing Victor Reillo's

car, and, again, I think the Government's taken a real restrictive view of this. I think there is an argument to be made that Alex Moreno is making those payments to him so that Mr. Ocasio will keep sending him cars, and that $600, while it might not be in exchange for his official duty, it's almost like lulling. It's almost like encouragement to stay part of my scheme. I think that $600 could absolutely be included in both the loss amount and the restitution amount.

I think the Government has taken a fair, restrictive view of the five incidents that were proven or evidence was put on at trial, three of which were substantive counts of the Indictment, and I think it would be fair to say that the Baltimore Police Department, in dealing with what Mr. Ocasio did, has lost $1,500. How about the pay of Detective Matthew Smith who sat at this trial for two weeks and in investigating this case? I mean, the entire IAD has been part of this, you know, massive investigation, the massive conspiracy in which Mr. Ocasio was a part of, and to suggest the Baltimore Police Department didn't lose some value is unfair, and, when it's fairly impossible to come up with an exact value, the amount of the gain is an acceptable way to value it, and the Government believes that that's a fair way to look at it.

THE COURT: Mr. Crowe?

MR. CROWE: Ms. Kelly has made a number of points, and I hope my recollection both as to what she said and what happened at the trial is correct. My recollection is that, with respect to Mr. Quintanilla, he was the gentleman whose car was damaged and

was in the backyard of his residence, that my client was called because they needed a Spanish-speaking interpreter. In fact, Mr. Quintanilla had an interpreter when he testified in court.

With respect to the $300 on Mr. Ocasio's car, that is not a matter that the Government has said that they thought should be taken into account until Ms. Kelly did so just a minute ago. We certainly did say that the payment for Reillo was not something which should be considered restitution, because it was not money that he gave for referring Mr. Reillo under color of official right. It was a referral as a friend, and I think it would be sort of silly to say that Reillo did it for that reason, and Mr. Reillo, of course, was a Government witness.

With respect to the statement that, you know, Detective Matthew Smith has been here in court and has caused the Baltimore Police Department quite a bit of money, I don't doubt that an awful lot of money has gone into the investigation in this case, but I think the evidence — I mean, I think that the loss, quite clearly that's not a proper measure of restitution, that restitution is just simply the loss, not what you had to do to investigate the claim or to prosecute it. Otherwise, you know, restitution would be the tail that wagged the dog in a lot of criminal cases.

THE COURT: Okay. Well, on the restitution question, which is a little bit distinct from the amount of loss question under the guidelines as I read the various cases that were cited both by the Government and Mr. Crowe, I find sufficient support to award to the Baltimore Police Department the

amount of $1,500 that results from the five admitted payments of $300 each to Mr. Ocasio for referring civilians — not a friend, not himself — to Majestic in contravention of his duties to the Baltimore Police Department.

I think that this order of restitution would properly be entered under 18 U.S.C. § 3663, the Victim-Witness Protection Act, I believe it's called, as a matter of the Court's discretion, rather than the mandatory act. I do believe that the actions that Mr. Ocasio took were a betrayal of trust and not what he should have been doing to fulfill his duties to the Baltimore City Police Department. If one were to even attempt to calculate it, I would certainly agree with the Government that there is at least that amount of value of time that Mr. Ocasio should have been spending on his correct and legitimate duties owed to the City rather than on participating in this scheme for his personal gain.

So I think, either looked at in a purely monetary loss to the City from the time monetary value to his services, or on the principle that he should be required to disgorge what he got by wrongfully using his public position to that public employer, as I say, under either or both — a combination of theories, I think an order of restitution to the Baltimore Police Department for the sum of $1,500 is correct.

Forfeiture, I'm not sure that I see the basis for or that we need to try to press in this case.

MS. KELLY: Usually there would be a money judgment — a forfeiture order for a money judgment

for the $1,500, but, in such a low amount, I don't think it's necessary in this case.

MR. CROWE: If there is no issue, there is no issue.

MS. KELLY: Yeah.

MR. CROWE: That's fine.

THE COURT: Okay. I believe, for an award under the Victim-Witness Protection Act, 18 U.S.C. § 3663, I'm also required to make some findings about Mr. Ocasio's ability to repay that. I don't know if that's really a dispute. I think he clearly has the ability at some point down the road to earn enough money to gradually, on a reasonable payment schedule, pay back that $1,500, but —

MR. CROWE: We agree, Your Honor, and will not contest that.

THE COURT: Still leaving somewhat unresolved the amount of loss for guidelines purposes and the issue of restitution to GEICO, which I believe would be under 18 U.S.C. § 3663(a), the mandatory restitution section, why don't we move on to recommendations for sentence, taking into account the 3553(a) factors, relative culpability, and any other matters you'd like to address, Ms. Kelly?

MS. KELLY: Without knowing the ultimate advisory guidelines range, consistent — you know, the Government's position in terms of Mr. Ocasio is no different than the other officers, and essentially basically what the Government's recommendation has been is sort of the low end of the advisory guidelines range, not knowing what that is, but

consistent with the other recommendations in the sentencings.

Mr. Ocasio is simply not one of the most culpable members of the conspiracy. The Government concedes that and believes that in no way has it attempted to dress Mr. Ocasio up as that. You know, besides the issue with his own car, the Government did not put on evidence at the trial that he was engaged in adding damage to other cars and being part of the insurance fraud claim. I think Mr. Moreno admitted that Mr. Ocasio was not one of the officers that he would go to for false — just, you know, straight false reports.

All that being said, the Government still believes that being part of the scheme and referring cars to Alex Moreno and Majestic for cash payments is still extremely serious, and that it's been said many, many times, but betrayed the trust of the citizens of Baltimore and the Baltimore Police Department, and, without a doubt, Mr. Ocasio's membership in this conspiracy and being part of the scheme has detrimentally and negatively affected the Baltimore Police Department, the citizens of Baltimore, and being part of this conspiracy has really widespread repercussions.

I mean, this case, even though Mr. Ocasio played a small part and maybe played a less culpable part compared to everybody else, I mean, it's in the paper almost every other day. I mean, it's just something that I think the City and the citizens of Baltimore are going to feel for a very long time, and, for that reason, the Government believes that a sentence of

incarceration is appropriate, regardless of where Mr. Ocasio fits in the overall part of it.

THE COURT: Okay. Thank you, Ms. Kelly. Mr. Crowe?

MR. CROWE: Thank you, Your Honor. This is, of course, a difficult day for Mr. Ocasio. My formal request is that he either be placed on probation, or, failing that, give him supervised release with the condition of home detention; however, being realistic, I know that the Court has sentenced a number of officers — I think probably about ten in total — and the sentences have ranged from 8 to 42 months. Therefore, we would suggest that, if the Court does determine to sentence him to a period of imprisonment, that he should be towards the low end of those officers who have already been sentenced, and we would be talking clearly about something in the range of eight months, but no more than — I guess no more than a year and a day.

We're also going to be asking — and I sometimes forget to do these — that the Court recommend to the Bureau of Prisons that he be placed in a facility which is as close as possible to his home in Harford County, but that that be consistent with a facility which can provide security for former law enforcement officers. They sometimes have a great deal of difficulty when they go into federal prisons. We would also ask that he be allowed to self report, and I understand from a conversation with Ms. Kelly a couple of days ago that the Government does not object to that.

Our principal argument, of course, is going to be on variances. The Court probably knows more about Mr. Ocasio than it does about many of the defendants that it has sentenced in these series of police towing cases. He was here, of course, during a six-day trial. The Court has heard the testimony of Juavier Conde, who is a current Baltimore City police officer; Ramon Guzman, who is retired from disability, and the testimony of Pastor William Soto.

I received an e-mail letter from Pastor Soto late last night, which I provided and I expect the Court has gone over and read. It confirms a great deal of what has been said; that is, that my client is a force for good within the Hispanic community up in Harford County, and that is particularly true with respect to his church about which the Court has heard testimony and which Pastor Soto has described.

I would also note that present in the courtroom here today is J.B., who is one of the teenagers that Mr. Ocasio supervises, and that Mr. J.B.'s mother and stepfather are here also. There are people who care about Mr. Ocasio. I'm sure the Court knows that from the attendance that we had during the trial and from the fact that these people are here today.

Mr. Ocasio has a 20-year stable marriage. He has two children who are doing well, and they have obviously suffered because of this conviction. His presentence report indicates he has not been able to find a job. There has been a great deal of financial hardship since he was discharged from the Baltimore City Police Department and charges were pressed against him in this case.

We introduced during the trial and appended again to our sentencing memorandum three commendations that he had received regarding two incidents. My recollection is that they both involved recovery of weapons, and that one of the incidents actually involved a foot chase where he had to go after an individual and disarm the individual. We think that these commendations are things which are clearly part of the entire picture.

We realize that, in considering a variance, the Court also has to take into account the seriousness of the offense and the deterrent effect. I don't think there is any question that this is a serious offense, and, from the sentences which the Court has imposed, clearly the Court views them as such, but I would point out that a lot of the seriousness of the offense is already taken into account in the guidelines.

In terms of deterrent effects, it would seem to me that this entire series of prosecutions has had a considerable deterrent effect, and I can't imagine that what this Court does with Mr. Ocasio, six months one way or the other, is going to add very much to the quantum of deterrent effect that we have in this case.

Also — I think it's under 3663(a)(6) — I might have missed a couple of other subsections there — in issue is the avoidance of unwarranted sentencing disparities of those convicted of similar conduct. I understand that everybody else the Court has sentenced has pled guilty and they got credit for acceptance of responsibility. I don't know this, but I would expect that a great many of them may have

gotten credit for substantial assistance, even though, to my knowledge, I don't think anybody testified — well, I'm quite certain that nobody testified in court.

As Ms. Kelly has said, my client did not tell people involved in accidents that they should not contact their insurance carriers before they talk to Majestic. He did not write up phony reports exaggerating the amount of damage. He did not, as I think one or two officers did, inflict additional damages to the cars themselves at the accident scenes so that the damage would match the phony reports that they were writing. He did not — I think Mr. Cintron did; I may be wrong — actually go out and scour the parking lots for cars that had already been damaged and convince people to say that — convince people — you know, go out, use a computer, hunt out the owners, and get them to say that the accident had just occurred so he could write up a report, and I think there was even one officer who just went around and banged up cars in a parking lot for that reason.

My client didn't do that. He didn't backdate — I'm sorry. He didn't update accident reports to make it appear that — I'm sorry. He didn't postdate accident reports to make it appear that an accident occurred six months ago, when an individual had coverage, rather than that night, after the coverage had lapsed. He didn't recruit owners to make claims, and he's clearly not somebody who operated in conjunction with a lot of other officers.

Mr. Ocasio is a very nice man. If I can be permitted to say it, he has been a most easy client to work with, cooperative, always on time, always

responsive, and just a genuinely nice guy. So, for his sake and the sake of his family, I would ask that the Court be as lenient as it conceivably can in terms of imposing a term of imprisonment.

THE COURT: Thank you, Mr. Crowe. I appreciate it.

I'll certainly come back to Mr. Ocasio in just a minute. Getting back to the question of restitution to GEICO, what appears to me would be reasonable is essentially leaving — if we are not in agreement on that point right now, if we can agree on a short period of time to supplement the record if there is something that needs to be done by way of supplementation, or simply to look at some exhibits. I am concerned whether or not Ms. Kelly should have better anticipated the details of Mr. Crowe's argument. Whether she should have or not, she didn't, but what she has said today, reminding us about the false statement that it would appear Mr. Ocasio made, which I would think could be readily determined by an examination of trial exhibits, I would be troubled not to be in a better position to consider the amount of restitution that might be due to GEICO, so I'm suggesting, depending on how long this might take, there are a couple of ways of doing it. We can, of course, continue the proceeding and have everybody back here in court, or we could agree to leave this issue open for just a relatively short period of time, and perhaps counsel and I could have a conference call about it, or just to say come back into court if we have to. What would you propose, Ms. Kelly?

What do you think is already in the record?

MS. KELLY: I believe what is in the record are the logs of Mr. Ocasio's contacts with Shannon Seaders and Mr. Adolf in terms of — there is really two issues, right? One is whether Mr. Ocasio made a false statement so that there would be any loss to GEICO. The Government feels confident it can find the trial exhibit or bring it quickly, and the Government feels confident that those logs establish that Mr. Ocasio absolutely represented to GEICO that the damage on the vehicle was there at the time of the accident, and it wasn't, and so the Government feels very confident that, with one trial exhibit, that that would be —

THE COURT: Don't we have the trial exhibits here?

MS. KELLY: You know, it was a late addition, and so I don't think it's in those. I would double check, but I think this was kind of a moving part, and my recollection was that we — we may have updated your binders. I could find it very quickly, but the other issue would be the amount, and I truly believe that the Government's position remains, and I'm sure GEICO's is that, if it's a fraudulent claim, the whole thing is fraudulent.

THE COURT: Right.

MS. KELLY: You know, there is no way for GEICO to now go figure out what the crack really looked like and figure out how much that would have cost to fix, because we don't know what it really looked like, because Mr. Ocasio provided a false statement about it. Nobody saw it besides Mr. Ocasio and Mr. Moreno prior to the adding of the damage. So, to suggest that we can parse out the amount that GEICO would have paid to fix it, it's just not reasonable. If it's a

fraudulent claim, the entire thing is fraudulent, is the Government's position, which is the reason that I didn't think I needed GEICO to say, "I would have paid $500 if I had known about the crack," I mean, because the Government's position is, if it's a fraudulent claim, the entire thing is fraudulent. That's sort of, I think, a reasonable approach.

So I think we're then back to just Part 1, which is: Did Mr. Ocasio, in fact, make a false statement? And, again, the Government's position is that there was ample evidence at the trial to make that finding. There is one exhibit in particular that I think spells that out. It's a log, and I can check the binders, or I'm happy to run across the street and grab it as well.

THE COURT: Okay. Anything else you can think of, Mr. Crowe?

MR. CROWE: No, Your Honor. I certainly want to look into the legal basis for saying that, if part of the claim was false, then the entire claim was false. I certainly know in Government contracting, that somebody puts in a claim for three months' work, and four or five days is something which is questionable, typically the whole claim isn't disallowed; it's just the four or five days, but I'm really pretty much at sea as to what the law is with respect to the theory the Government suggests.

MS. KELLY: I mean, I'm simply suggesting how in the world would we know? We don't know what the damage was really. There is no way for GEICO to make an evaluation as to the amount it would have paid if Mr. Ocasio didn't commit the fraud.

THE COURT: Right. I agree. The trouble is that this wasn't briefed, and it wasn't recognized, and we're in a difficult position because I would prefer to have some opportunity to, if we're not going to reach agreement, look into this before creating a record which is obviously going to the Fourth Circuit, and we'll want to understand what the basis for the restitution amount was.

So I believe that I am entitled to defer on the amount of restitution for up to 90 days in order to have further proceedings, and, if that's where we are, that's what we'll have to do. So we resolved the other issues.

Mr. Ocasio, if there is anything you'd like to say before I make a final decision about the sentence in this case other than this one issue of restitution, you have the right to do that. I won't hold it against you if you don't, but, if you'd like to speak, you have the right to do that.

MR. CROWE: Your Honor, I have advised Mr. Ocasio that, because of the likelihood of an appeal, it would probably be inadvisable for him to make any statement at this time, and I expect he'll confirm that that's the advice and that's the reason for his decision.

THE DEFENDANT: It is, Your Honor. I totally accept the advice.

THE COURT: All right. That's perfectly understandable.

Okay. Going back to the issue of the additional two levels for loss, I'll have a couple of comments to

make on that. First of all, I'm not going to impose the additional two levels for the loss being greater than $5,000. It is something that the burden is on the Government to prove. I note that, even with the 1,500, plus the 1,500, plus the full 2,500, we would be only over the $5,000 by $500. I think there is enough question about fairly attributing amounts of money that were paid to Mr. Rodriguez to Mr. Ocasio in the absence of any direct testimony from Mr. Rodriguez to raise a question there.

There is still a little bit of a question in my mind about the GEICO claim, although, frankly, I think, for purposes of calculating the amount of loss under the guidelines, the Government's theory would probably prevail. It's a fraudulent claim. It becomes a fraudulent claim, but there is still an issue about Mr. Rodriguez, and it is not an issue that I think we need to build into this, because there are 3553(a) factors that are going to control the sentence, so my sentence would not change. If I'm wrong on that, if it should have been 18, my ultimate sentence would not change, but I think that the advisory guideline calculation should be offense level of 16, criminal history category of I, and that is a range from 21 to 27 months.

Now, before I proceed, has anybody not had a chance to say anything they want to say, anything that's out of here?

(No response.)

THE COURT: Okay. The substance of what Mr. Ocasio did obviously is a major thing for me to take into consideration here along with the relative

culpability. The same factors that have played into my decisions in the other officers' cases are at work here. First of all, it is obviously a serious offense for all the reasons that have been stated. The importance of the public being able to put confidence in the trustworthiness of their sworn officers, the fact that someone who has taken an oath to uphold the law does not knowingly violate it to the detriment of the people he is supposed to be serving, I think we all understand that.

Mr. Ocasio's involvement in this, as — and the Government has not tried to exaggerate it at all. I don't believe Mr. Ocasio's involvement is at a lower level than a number of the other officers I have sentenced. In terms of the number of referrals, it's not that many. Other than the one false statement about a personal car, I don't believe there was evidence about creating false reports, knowingly adding damage to other cars, having the widespread involvement that a number of other people did, and of course that's reflected in the advisory guideline range.

Mr. Ocasio has done commendable things as well for the City of Baltimore, has earned commendations, has, in many aspects of his life, done good things and tried to do good things.

In comparing the offense, his culpability, however, and where he should be in terms of the sentence — and I do believe a sentence of incarceration is required — I must also take into account that Mr. Ocasio, unlike Mr. Reeping, for example, and some of the other officers that have been sentenced to lower amounts, Mr. Ocasio did not

come forward and accept responsibility, and he did not cooperate with the Government. He did not earn a 5K1 motion.

That is entirely his right. It is not something to be punished for, but I cannot also give him the benefit that I did give some other officers for either acceptance and/or cooperation, without going into names, but he simply did not earn that, and, therefore, I believe that an appropriate period of incarceration in this case, Mr. Ocasio, is 18 months in the custody of the Bureau of Prisons, and that is going to be a concurrent sentence on Counts 1, 5, 6, and 7 — 18 months in the custody of the Bureau of Prisons.

There is going to be a period of three years of supervised release following that period of incarceration, which will assist in the paying back of the restitution. As I have already indicated, the amount of $1,500 to the Baltimore City Police Department under 18 U.S.C. § 3663, the Victim-Witness Protection Act, I think is justified as a matter of discretion, and is something you would have the ability to pay back. I will impose a nominal payment schedule of $100 a month recognizing you're currently unemployed, but you can begin to pay it back through the Inmate Financial Responsibility Program, and then, as I say, a nominal payment schedule after that, which the probation officer will have the authority to recommend a change in if warranted by financial circumstances.

Regarding the issue of restitution to GEICO, as I've just indicated, I will reserve on that. I will consult with counsel about what needs to be done by

way of either briefing or gathering together exhibits to be able to make an informed determination, and I will consult with counsel at that point about whether Mr. Crowe and his client wish to come back into court for that final part of the proceeding or not, but I'm just deferring on that at this point.

Now, Mr. Ocasio's financial circumstances, I don't believe, permit imposition of a fine in addition to whatever the final amount of restitution will be. There is a required $100 special assessment on each count, so that's a total of $400 by way of special assessment.

I'm going to suspend drug testing. That does not seem to be an issue for Mr. Ocasio. I certainly will permit self reporting, will recommend a facility as close to his home as possible that is consistent both with his security level and his security needs. Special conditions of supervised release will — because of the restitution being in there and the need to assess financial circumstances, special conditions of supervised release would include providing the Probation Office access to any financial information that it might want to see, and not opening new lines of credit without permission.

In terms of a self reporting date, ordinarily the designations are taking six to eight weeks, something like that. I would probably, at this point, look at July 30th?

THE CLERK: Right.

THE COURT: July 30th, sir, would be a backup date. In other words, you'll get a judgment that says that you have to report to the institution where you are

designated. You'll get a designation in writing to tell you where. If you don't get that designation, the judgment is going to say that you have to report to the Marshal on July 30th. In fact, if it gets anywhere close to July 30th and you have not gotten a designation, get a hold of Mr. Crowe and, if it's through no fault of your own, we'll be able to extend that designation date.

Have I left anything out of that? Any legal objection? Anything I have not covered in that sentence?

MS. KELLY: No, Your Honor.

MR. CROWE: No, Your Honor.

THE COURT: Okay. All right. Mr. Ocasio, other than the one matter of restitution, that is the sentence. You have the right to appeal. You'll talk to Mr. Crowe. Any appeal would need to be noted within 14 days.

You understand that, sir?

THE DEFENDANT: Yes.

THE COURT: Okay.

MS. KELLY: The Government would move to dismiss the original Indictment against Mr. Ocasio. He was convicted under the Superseding Indictment, so —

THE COURT: Sure.

MS. KELLY: — the Government moves the original Indictment.

THE COURT: All right. If counsel would call the office early next week to set up a conference call.

MS. KELLY: Okay.

MR. CROWE: Yes, Your Honor.

THE COURT: All right. Thank you.

THE CLERK: All rise. This Honorable Court now stands adjourned.

(Proceedings adjourned.)

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